

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-90

UNITED STATES OF AMERICA, PETITIONER,

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

*ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF CLAIMS*

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UNITED STATES COURT OF CLAIMS

DOCKET ENTRIES

GENERAL

DOCKET

CASE NO. 149-65

Title of Case

Attorneys

CHICAGO, BURLINGTON &
QUINCY RAILROAD COMPANY

vs.

THE UNITED STATES

FOR PLF.:

Atty of Record

Eldon Martin,
Richard T. Cabbage,
Gerald J. O'Rourke, Jr.,
Robert E. Simpson
of counsel

FOR U.S.

Frances Foltz Kane
Robert T. Molloy
Rosslyn Building, North
1911 North Fort Myer
Drive
Arlington, Virginia 22209

Atty of Record.

Income tax.

May 7, 1965

PETITION FILED. 10 COPIES OF
PETITION TO DEFENDANT.

AMOUNT CLAIMED: \$492,290.25
+\$3,105.77

PLAINTIFF'S ADDRESS: 547 West
Jackson Blvd., Chicago.

Date	Proceedings
May 7, 1965	Filing fee of \$10 paid by plaintiff.
June 7, 1965	Court filed order referring case to Commr. vacated 12-5-67.
Jul. 6, 1965	Defendant's motion for extension of time (to September 4, 1965) to file answer filed. Copies (2) to atty. ALLOWED Jul. 19, 1965
Sep. 7, 1965	Defendant's answer to plaintiff's petition filed. Copies (2) to atty. (and affirmative defense)
Sep. 13, 1965	Plaintiff's reply to defendant's answer filed. Copies (10) to deft.
Sep. 13, 1965	Printed copies of defendant's answer received. Copies (10) to atty.
Sep. 22, 1965	Plaintiff's motion to dismiss defendant's setoff defense, or in the alternative, to direct deft. to demonstrate a reasonable basis therefor, filed. Copies (2) to deft. ALLOWED OCT. 5, 1965, to the extent that defendant is to demonstrate within 30 days that it has concrete and positive evidence that there is a reasonable basis for the set-off defense.
Oct. 27, 1965	See 164-65 for defendant's motion for production. See entry Nov. 10, 1965.
Oct. 27, 1965	See 164-65 for defendant's motion for call. See entry Nov. 10, 1965.
Oct. 28, 1965	Defendant's motion for extension of time (to February 2, 1966) to demonstrate reasonable basis for set off defense filed. Copies (2) to atty. (in this and 164-65) ALLOWED NOV. 10, 1965 with no further extension to be granted.
Nov. 3, 1965	Plaintiff's objection to defendant's motion for extension of time to demonstrate reasonable basis, etc. filed. Copies (2) to deft.

Date	Proceedings
Nov. 3, 1965	See 164-65 for—Plaintiff's objection to motions for production & Call.
Nov. 10, 1965	Re defendant's motion for 'production pursuant to Rule 40, ALLOWED WITH THE DOCUMENTS TO BE PRODUCED AT THE OFFICE OF THE ATTORNEY FOR THE PLAINTIFF FOR INSPECTION AND COPYING BY DEFENDANT NOT LATER THAN 30 DAYS FROM THE DATE OF ISSUANCE OF THIS ORDER. in this and 164-65.
Nov. 10, 1965	Re defendant's motion for call pursuant to Rule 39, ALLOWED WITH COMPLIANCE NOT LATER THAN 30 DAYS FROM THE ISSUANCE OF THIS ORDER. in this and 164-65.
Nov. 16, 1965	Plaintiff's partial objection to order allowing defendant's motion to produce and request to amend said order filed. Copies (2) to deft. (in this and 164-65) The order of November 10, 1965, allowing production of documents is vacated and deft's. motion is DENIED without prejudice.
Nov. 16, 1965	Plaintiff's reply to defendant's motion for call filed. Copies (2) NOV. 29, 1965. to deft. (in this and 164-65). (Compliance to motion).
Nov. 26, 1965	Defendant's response to plaintiff's partial objection to order allowing defendant's motion to produce and request to amend said order filed. Copies (2) to atty. (in this and 164-65).
Jan. 10, 1966	Defendant's motion for leave to serve upon plaintiff a request for admissions filed. Copies (2) to atty. SEE ENTRY OF JAN. 18, 1966.
Jan. 17, 1966	Plaintiff's objection to defts. motion for admissions filed. Copies (2) to deft.

Date	Proceedings
Jan. 18, 1966	Re Defendant's motion of January 10, 1966: ALLOWED with plaintiff to have 30 days to respond. Defendant is allowed a further extension to reply to the order of October 5, 1965 until 15 days after filing of plaintiff's response.
Feb. 11, 1966	Plaintiff's answers to defendant's request for admissions received. Copies (2) to deft.
Feb. 28, 1966	Defendant's submission purs. to Commrs. Order of Oct. 5, 1966 filed. Copies (2) to atty.
Apr. 5, 1966	Commissioner's order under Rule 43 filed. Copy to parties.
Apr. 26, 1966	Plaintiff's motion for extension of time (to June 4, 1966) to respond to order of commissioner under rule 43 filed. Copies (2) to deft. (in this and 164-65) ALLOWED MAY 9, 1966.
Jun. 2, 1966	Plaintiff's response to pretrial order of April 5, 1966, Rec. Copies (2) to deft.
Jun. 29, 1966	Defendant's motion for extension of time (to Sept. 4, 1966 to) file response pursuant to order of commissioner under Rule 43 filed. Copies (2) to atty. ALLOWED JULY 13, 1966.
Sep. 6, 1966	Defendant's motion for extension of time (to Oct. 4, 1966 to) file response pursuant to order of commissioner under Rule 43 filed. Copies (2) to atty. ALLOWED SEPT. 19, 1966.
Oct. 4, 1966	Defendant's motion for extension of time (to Oct. 18, 1966 to) file response pursuant to order of commissioner under Rule 43 filed. Copies (2) to atty. ALLOWED OCT. 5, 1966.

Date	Proceedings
Oct. 18, 1966	Defendant's motion for extension of time (to Nov. 17, 1966) to file response purs. to order of Commissioner under Rule 43, filed. Copies (2) to atty. ALLOWED OCT. 19, 1966.
Nov. 17, 1966	Defendant's motion for extension of time (to November 21, 1966) to file response to Rule 43 order filed. Copies (2) to atty. ALLOWED NOV. 18, 1966.
Nov. 21, 1966	Defendant's response pursuant to commissioner's pretrial order under Rule 43 received. Copies (2) to atty.
Sep. 20, 1967	Commissioner's memorandum on pretrial conference filed. Copy to parties.
Sep. 20, 1967	Defendant's motion for extension of time (to September 22, 1967) to file its amended answer filed. Copies (2) to atty. ALLOWED SEP. 22, 1967.
Sep. 22, 1967	Defendant's supplemental motion to correct motion for time extension filed. Copy to parties. ALLOWED SEP. 22, 1967.
Sep. 22, 1967	Defendant's motion for leave to file a first amended answer filed. Copies (2) to atty. See Order of Oct. 24, 1967.
Oct. 2, 1967	Plaintiff's motion for extension of time (to October 7, 1967) to file objections to motion for leave to file first amended answer filed. Copies (2) to deft. (in this and 164-65) ALLOWED OCT. 3, 1967, as to case no. 149-65.
Oct. 9, 1967	Plaintiff's objection to defendant's motion for leave to file a first amended answer filed. Copies (2) to deft.
Oct. 11, 1967	Plaintiff's submission identifying prospective witnesses pursuant to requirement

Date	Proceedings
	of pretrial memorandum of September 20, 1967 received. Copies (2) to deft.
Oct. 19, 1967	Defendant's response to plaintiff's objection to defendant's motion for leave to file a first amended answer filed. Copies (2) to atty.
Oct. 24, 1967	Commr's order allowing Deft's motion for leave to file first amended answer filed. Copies to parties.
Oct. 24, 1967	Def't's first amended answer filed. Copies (2) to atty.
Nov. 13, 1967	Defendant's motion for extension of time (to November 16, 1967) to comply with commissioner's order of October 24, 1967 filed. Copies (2) to atty. ALLOWED NOV. 14, 1967.
Nov. 14, 1967	Defendant's first amended answer filed. Copies (10) to atty. (ie, printed copies of first amended answer rec'd). (Filed Oct. 24, 1967).
Nov. 16, 1967	Defendant's motion for extension of time (to December 17, 1967) to comply with commissioner's order filed. Copies (2) to atty. ALLOWED TO DEC. 1, 1967, NOV. 21, 1967, see entry.
Nov. 17, 1967	Plaintiff's reply to first amended answer filed by leave of commissioner (oral allowance). Copies (10) to deft.
Nov. 20, 1967	Defendant's submission pursuant to the commissioner's order of October 24, 1967 filed. Copies (2) to atty.
Nov. 20, 1967	Plaintiff's objection to defendant's motion for extension of time filed. Copies (2) to deft.
Nov. 20, 1967	Stipulation of facts filed by plaintiff. Copies (2) to deft.

Date	Proceedings
Nov. 21, 1967	Re defendant's motion of Nov. 16, 1967: Defendant is allowed an extension to and including December 1, 1967, to comply with paragraph 2 of the order of October 24, 1967, with no further extension to be allowed for any reason.
Nov. 27, 1967	Defendant's motion for an order requiring plaintiff to respond to defendant's request for admissions on or before December 15, 1967 filed. Copies (2) to atty. ALLOWED DEC. 8, 1967.
Nov. 27, 1967	Defendant's motion for leave to file a request for admissions filed. Copies (2) to atty. ALLOWED DEC. 8, 1967. Plaintiff to respond on or before December 15, 1967.
Nov. 29, 1967	Plaintiff's motion for extension of time (to December 10, 1967) to respond to defendant's submission filed. Copies (2) to deft. ALLOWED DEC. 1, 1967.
Nov. 30, 1967	Plaintiff's objection to defendant's motion for leave to file a request for admission filed. Copies (2) to deft.
Dec. 1, 1967	Defendant's submission pursuant to the commissioner's order of October 24, 1967 filed. Copies (2) to atty.
Dec. 5, 1967	Court filed order referring case to Commissioner James F. Davis.
Dec. 11, 1967	Plaintiff's responses to defendant's submissions pursuant to the commissioner's order of October 24, 1967 filed. Copies (2) to deft.
Dec. 14, 1967	Plaintiff's answers to defendant's request for admissions with respect to the Section 1341 issue received. Copies (2) to deft.
Dec. 21, 1967	Commissioner's memorandum of pretrial conference filed. Copy to parties. (defend-

Date	Proceedings
	ant to file document by Dec. 29, 1967, plttf's. due: Jan. 5, 1968 and defendant granted leave to take deposition of John W. Wheeler).
Dec. 22, 1967	Plaintiff's supplement to submission identifying prospective witnesses pursuant to pretrial memorandum filed. Copies (2) to deft.
Dec. 29, 1967	Defendant's supplemental submission pursuant to the Commissioner's order of October 24, 1967, relating to the vacation pay accrual issue filed. Copies (2) to atty.
Jan. 5, 1968	Plaintiff's response to defendant's submission pursuant to the commissioner's order of October 24, 1967 relating to the vacation pay accrual issue filed. Copies (2) to deft.
Jan. 9, 1968	Plaintiff's motion for issuance of subpoena (on Anthony S. Filicicchia) filed. Copies (2) to deft. ALLOWED JAN. 10, 1968.
Jan. 10, 1968	Commissioner's order and memorandum re burden of proof filed. Copies (2) to parties.
Jan. 12, 1968	Deposition of Merrill D. Knight filed. Notice to parties.
Jan. 12, 1968	Depositions of Douglas A. Rieser and Anthony S. Filicicchia together with 3 exhibits attached filed. Notice to parties.
Jan. 17, 1968	Plaintiff's motion for extension of time (to February 16, 1968) to file a request for review of the commissioner's order and memorandum re burden of proof filed. Copies (2) to deft. ALLOWED JAN. 31, 1968.
Jan. 22, 1968	Certificate of reporting arrangements filed by plaintiff.

Date	Proceedings
Jan. 22, 1968	Certificate of reporting arrangements filed by defendant.
Feb. 5, 1968	Plaintiff's exhibit 183 filed. Notice to parties.
Feb. 14, 1968	Transcript of testimony (4 vol's.) taken at Chicago, Illinois on January 15, 16, 17 & 18, 1968, together with plaintiff's exhibits 1 thru 182, 184 thru 206, defendant's exhibits 1 thru 37 and the AFE's listed on page 883 of transcript as being introduced in evidence by stipulation filed. Notice to parties.
Feb. 16, 1968	Plaintiff's request for review of commissioner's order and memorandum re burden of proof filed. Copies (2) to deft.
Mar. 4, 1968	Defendant's motion for leave to respond to plaintiff's request for review of commissioner's order, and request for extension of time (to March 14, 1968) to so respond. ALLOWED MAR. 8, 1968.
Mar. 14, 1968	Defendant's motion to strike paragraphs 36-39 of its first amended answer filed. Copies (2) to atty. ALLOWED MAR. 28, 1968.
Mar. 14, 1968	Defendant's memorandum of law in response to plaintiff's request for review of commissioner's order, etc. filed. Copies (2) to atty.
Mar. 25, 1968	Plaintiff's motion to file reply to Government's memorandum of law re burden of proof filed. Copies (2) to deft. ALLOWED MAR. 26, 1968.
Mar. 26, 1968	Plaintiff's reply to government's memorandum of law re burden of proof filed. Copies (2) to deft.

Date	Proceedings
Apr. 5, 1968	Court entered order denying plaintiff's request for review filed February 16, 1968. Copy to parties.
Jul. 3, 1968	Plaintiff's motion for leave to take discovery deposition (of J. H. Scholl) filed. Copies (2) to deft. DENIED SEP. 6, 1968.
Jul. 12, 1968	Defendant's response to plaintiff's motion for leave to take discovery deposition filed. Copies (2) to atty.
Jul. 17, 1968	Plaintiff's motion for leave to file reply to defendant's response to plaintiff's motion for leave to take discovery deposition filed. Copies (2) to deft. ALLOWED SEP. 16, 1968, as of Sep. 6, 1968. and filed this day.
Jul. 18, 1968	Plaintiff's motion for leave to file first amended petition filed. Copies (2) to deft.
Jul. 24, 1968	Commissioner's memorandum of informal conference filed. Copy to parties.
Jul. 24, 1968	Plaintiff's first amended petition filed. Copies (10) to deft.
Sep. 13, 1968	Plaintiff's appeal from order of trial commissioner of Sept. 6, 1968, denying plaintiff's motion for leave to take discovery deposition of J. H. Scholl filed. Copies (2) to deft. DENIED OCT. 18, 1968.
Sep. 16, 1968	Plaintiff's reply to defendant's response to taxpayer's motion for leave to take discovery deposition filed. Copies (2) to deft.
Sep. 18, 1968	Defendant's motion for extension of time (to October 9, 1968) to answer amended petition filed. Copies (2) to atty. ALLOWED OCT. 1, 1968.
Sep. 19, 1968	Commissioner's memorandum regarding plaintiff's request for review of commissioner's order, filed September 13, 1968, filed. Copy to parties.

Date	Proceedings
Oct. 4, 1968	Defendant's answer to first amended petition filed. Copies (2) to atty.
Oct. 11, 1968	Printed copies of defendant's answer to first amended petition received. Copies (9) to atty.
Oct. 18, 1968	Plaintiff's motion for call and for production of documents filed. Copies (2) to deft. DENIED NOV. 20, 1968. <i>Shakespeare Co., v. United States</i> 389 F. 2d 772 (Ct Cls. 1968).
Oct. 23, 1968	Defendant's motions for admissions pursuant to Rule 42 and for pretrial order pursuant to Rule 43 filed. Copies (2) to atty. ALLOWED NOV. 6, 1968.
Oct. 28, 1968	Defendant's motion for extension of time (to November 15, 1968) to respond to motion for call, etc. filed. Copies (2) to atty. ALLOWED NOV. 13, 1968.
Nov. 1, 1968	Defendant's motion for leave to file a second amended answer filed. Copies (2) to atty. ALLOWED NOV. 15, 1968.
Nov. 15, 1968	Defendant's second amended answer filed. Copies (10) to atty.
Nov. 15, 1968	Defendant's response to plaintiff's motion for call, etc. filed. Copies (2) to atty.
Nov. 19, 1968	Defendant's motion for order permitting introduction of additional documents and facts regarding the donated property issue filed. Copies (2) to atty. ALLOWED DEC. 4, 1968. See letter to the parties this date.
Nov. 22, 1968	Plaintiff's response and objection to motion for order permitting introduction of additional documents, etc. filed. Copies (2) to deft.

Date	Proceedings
Nov. 27, 1968	Plaintiff's request for review of order of trial commissioner of November 20, 1968, denying plaintiff's motion for call and for production of documents filed. Copies (2) to deft.
Nov. 27, 1968	Plaintiff's request for oral argument on plaintiff's request for review, etc. filed. Copies (2) to deft.
Dec. 11, 1968	Plaintiff's request for review of trial commissioner's order allowing defendant's motion to reopen the record with respect to the donated property issued filed. Copies (2) to deft.
Dec. 12, 1968	Plaintiff's motion for admissions pursuant to Rule 42 filed. Copies (2) to deft. ALLOWED DEC. 26, 1968.
Jan. 14, 1969	Defendant's response to plaintiff's request for admissions received. Copies (2) to atty.
Jan. 31, 1969	Court entered order granting plaintiff's request for oral argument, placing plaintiff's request for review of order of trial commissioner of November 20, 1968, denying plaintiff's motion for call and for production of documents, on an appropriate calendar for oral argument, and denying plaintiff's request for review of trial commissioner's order allowing defendant's motion to reopen the record with respect to the donated property issue. Copy to parties.
Feb. 4, 1969	Plaintiff's motion for admissions pursuant to Rule 42 filed. Copies (2) to deft. ALLOWED FEB. 17, 1969.
Feb. 5, 1969	Plaintiff's motion [for leave to serve a request for] admissions pursuant to Rule 42 filed. Copies (2) to deft. ALLOWED FEB. 25, 1969.

Date	Proceedings
Feb. 7, 1969	Defendant's motion for leave to file a third amended answer filed. Copies (2) to atty. (See Commr's order April 7, 1969).
Feb. 13, 1969	Plaintiff's motion for extension of time (to March 17, 1969) to respond to motion for leave to file a third amended answer filed. Copies (2) to deft. ALLOWED FEB. 28, 1969, without prejudicing defendant's rights to further trial preparation in the event the third amended answer is filed.
Feb. 14, 1969	Plaintiff's motion for leave to serve a request for admissions with respect to the second hand rail issue filed. Copies (2) to deft. ALLOWED FEB. 28, 1969.
Feb. 18, 1969	Plaintiff's motion for pretrial order filed. Copies (2) to deft. ALLOWED FEB. 28, 1969, to the extent that defendant submit a list of prospective witnesses insofar as it has not already done so.
Feb. 18, 1969	Defendants opposition to plaintiff's motion for enlargement of time, or, in the alternative, defendant's request for a protective order filed. Copies (2) to atty.
Feb. 20, 1969	Defendant's response to motion for pre-trial order filed. Copies (2) to atty.
Feb. 27, 1969	Plaintiff's motion for leave to take discovery deposition of Arthur H. Gass filed. Copies (2) to deft. ALLOWED MAR. 12, 1969.
Mar. 3, 1969	Argued and submitted on plaintiff's request for review of Commissioner's order denying plaintiff's motion for call and production. Deft to file memo relative to possible stipulation.
Mar. 6, 1969	Defendant's motion for extension of time (to March 21, 1969) to respond to request for admissions, etc. filed. Copies (2) to

Date	Proceedings
	atty. ALLOWED MAR. 10, 1969, to the extent that defendant's to respond be MAR. 14, 1969.
Mar. 7, 1969	Plaintiff's objection to defendant's motion for extension of time filed. Copies (2) to deft.
Mar. 7, 1969	Defendant's response to plaintiff's two requests for admissions with respect to the secondhand rail issue received. Copies (2) to atty.
Mar. 14, 1969	Defendant's memorandum to the court filed. Copies (2) to atty.
Mar. 14, 1969	Plaintiff's motion for extension of time (to April 1, 1969) to respond to motion for leave to file a third amended answer filed. Copies (2) to deft. ALLOWED MAR. 27, 1969.
Mar. 14, 1969	Defendant's motion for extension of time (to March 19, 1969) to respond to request for admissions filed. Copies (2) to atty. ALLOWED MAR. 20, 1969.
Mar. 17, 1969	Pltf's objection to Deft's motion for time extension filed. Copies (2) to deft.
Mar. 17, 1969	Pltf's response to Deft's memorandum to the Court & Pltf's motion to strike argumentative provisions of stipulation, etc. filed. Copy to deft.
Mar. 19, 1969	Defendant's response to plaintiff's request for admissions concerning the Mexican Tax Credit Issue received. Copies (2) to atty.
Mar. 28, 1969	Plaintiff's objection to the motion for leave to file a third amended answer filed. Copies (2) to deft.

Date	Proceedings
Apr. 7, 1969	Commissioner's order denying defendant's motion for leave to file a third amended answer filed. Copy to parties.
Apr. 8, 1969	Defendant's response to plaintiff's motion to strike (filed March 17) filed. Copies (2) to atty.
Apr. 10, 1969	Transcript of testimony (1 volume) taken at Washington, D. C. on March 11, 1969, together with plaintiff's exhibits 1-MT thru 8-MT and defendant's exhibits 1-MT thru 4-MT, 6-MT thru 17-MT, 1-DP and 2-DP filed. Notice to parties.
Apr. 10, 1969	Deposition of Arthur H. Gass filed. Notice to parties.
Apr. 24, 1969	Defendant's motion to dismiss plaintiff's request for review (filed November 27, 1968) as moot filed. Copies (2) to atty. SEE COURT ORDER OF MAY 2, 1969.
Apr. 25, 1969	Plaintiff's motion for withdrawal of request for review of trial Commissioner's order of Nov. 20, 1968 filed. Copies (2) to deft. SEE COURT ORDER OF MAY 2, 1969.
Apr. 29, 1969	Transcript of testimony (three volumes) taken at Chicago, Illinois on March 25, 26 and 27, 1969, together with plaintiff's exhibits 9-MT thru 20-MT, 1-SR thru 14-SR and defendant's exhibits 3-DP thru 8-DP, 1-VP, 2-VP, 1-SR thru 8-SR filed. Notice to parties.
May 2, 1969	Court entered order dismissing the request for review, filed November 27, 1968, and vacating, as moot, the trial commissioner's order of November 20, 1968. Copy to parties.
May 21, 1969	Transcript of testimony (1 volume) taken at Washington, D. C. on April 21, 1969,

Date	Proceedings
	together with plaintiff's exhibit 15-SR, defendant's exhibits 18-MT, 19-MT, 20-MT, 9-SR, 10-SR and 11-SR filed. Notice to parties.
May 21, 1969	Commissioner's order closing proof, etc. filed. Copy to parties.
Jun. 2, 1969	Defendant's exhibit 12-SR (omitted when transcript was filed on May 21, 1969) filed. Notice to parties.
Jun. 19, 1969	Plaintiff's motion for extension of time (to July 21, 1969) to file requested findings of fact and brief filed. Copies (2) to deft. ALLOWED JUL. 1, 1969.
Jul. 18, 1969	Plaintiff's requested findings of fact and brief filed. Copies (2) to deft.
Aug. 18, 1969	Defendant's motion for extension of time (to September 19, 1969) to file requested findings, etc. filed. Copies (2) to atty. ALLOWED SEP. 3, 1969, with no further extensions to be granted without a showing of exceptional circumstances.
Sep. 19, 1969	Defendant's motion for extension of time (to October 27, 1969) to file its requested findings, etc. filed. Copies (2) to atty. ALLOWED OCT. 6, 1969, but only to October 13, 1969. No further extensions will be granted.
Sep. 23, 1969	Plaintiff's objection to defendant's motion for extension of time filed. Copies (2) to deft.
Oct. 9, 1969	Defendant's motion for extension of time (to October 27, 1969) to file its requested findings, etc. filed. Copies (2) to atty. ALLOWED OCT. 10, 1969.
Oct. 27, 1969	Defendant's objections to plaintiff's requested findings of fact and defendant's

Date	Proceedings
	requested findings of fact filed. Copies (2) to atty.
Oct. 27, 1969	Defendant's brief to the commissioner filed. Copies (2) to atty.
Nov. 4, 1969	Plaintiff's motion to close record and briefing filed. Copies (2) to deft. DENIED AS MOOT: See Nov. 28, 1969.
Nov. 5, 1969	Defendant's motion for leave to file out of time supplements to its requested findings, etc. filed. Copies (2) to atty. ALLOWED, see Nov. 28, 1969.
Nov. 6, 1969	Plaintiff's objections to defendant's motion for leave to file out of time supplemental findings, etc. filed. Copies (2) to deft.
Nov. 12, 1969	Defendant's response to motion to close record, etc. and to objections to motion for leave to file supplemental findings, etc. Copies (2) to atty.
Nov. 28, 1969	Commr. entered order allowing Deft. 5 days hereof to file properly assembled & supplemented proposed findings, objections & brief (such filing to be in substitution of Deft's filings of Oct. 27, 1969), with Pltf. granted 20 days hereof to file reply brief & objections, and with Pltf's motion to close record denied as moot. Copy to parties.
Dec. 1, 1969	Plaintiff's request for review of trial commissioner's order (of November 28, 1969) filed. Copies (2) to deft.
Dec. 2, 1969	Defendant's reassembled objections to plaintiff's requested findings of fact and defendant's requested findings of fact filed. Copies (2) to atty.
Dec. 2, 1969	Defendant's reassembled brief to the commissioner filed. Copies (2) to atty.

Date	Proceedings
Dec. 8, 1969	Plaintiff's reply brief (to the commissioner) filed. Copies (2) to deft.
Jan. 9, 1970	Court entered order denying plaintiff's request for review (filed December 1, 1969). Copy to parties.
May 27, 1970	Commissioner's memorandum of conference filed. Copy to parties.
Jun. 15, 1970	Plaintiff's response to trial commissioner's post-trial conference memorandum and order filed. Copies (2) to deft.
Jun. 29, 1970	Defendant's supplemental memorandum pursuant to trial commissioner's order of May 27, 1970 filed. Copies (2) to atty.
Jul. 13, 1970	Plaintiff's reply to defendant's supplemental memorandum pursuant to trial Commissioner's order of May 27, 1970 filed. Copies (2) to deft.
Oct. 6, 1970	Stipulation reopening record to incorporate attached Treasury form filed, by defendant. Notice to comr.
Oct. 28, 1970	Commissioner's opinion and findings of fact filed. Copies (5) to pltf. and (15) to deft.
Nov. 19, 1970	Plaintiff's notice of intention to except to trial commissioner's report filed. Copies (2) to deft.
Nov. 24, 1970	Defendant's notice of intention to except to the commissioner's findings and recommendations filed. Copies (2) to atty.
Dec. 11, 1970	Plaintiff's motion for extension of time (to January 13, 1971) to file its exceptions and brief filed. Copies (2) to deft. ALLOWED DEC. 22, 1970.
Jan. 11, 1971	Plaintiff's exceptions and brief filed. Copies (13) to deft.

Date	Proceedings
Feb. 10, 1971	Defendant's motion for extension of time (to April 11, 1971) to file its exceptions, etc. filed. Copies (2) to atty. ALLOWED FEB. 12, 1971 in that an extension of time is granted to April 1, 1971 with no further extension to be granted except for illness or similar emergency.
Apr. 1, 1971	Defendant's motion for extension of time (to April 8, 1971) to file its exceptions and brief filed. Copies (2) to atty. ALLOWED APR. 2, 1971.
Apr. 8, 1971	Defendant's exceptions and brief filed. Copies (13) to atty.
Apr. 26, 1971	Plaintiff's motion for extension of time (to June 28, 1971) to file its reply brief filed. Copies (2) to deft. ALLOWED APR. 30, 1971, with no further extension to be granted except for illness or similar emergency.
Jun. 28, 1971	Plaintiff's reply brief filed. Copies (10) to deft.
Sep. 7, 1971	Defendant's motion for additional time for oral argument (two hours) filed. Copies (2) to atty. SEE ENTRY ON MOTION OF SEP. 9, 1971.
Sep. 9, 1971	Plaintiff's motion for additional time for oral argument filed. Copy to deft. ALLOWED SEP. 10, 1971 to the extent that plaintiff and defendant are granted one (1) hour for oral argument.
Sep. 23, 1971	Defendant's motion for additional time for argument (total of 1¾ hours) and that the issues be argued seriatim filed. Copies (2) to atty. DENIED SEP. 24, 1971.
Sep. 24, 1971	Defendant's motion for leave to file supplemental brief filed. Copies (2) to atty. ALLOWED SEP. 27, 1971 and filed.

Date	Proceedings
Sep. 27, 1971	Defendant's supplemental brief filed. Copies (12) to atty.
Sep. 30, 1971	Plaintiff's motion for leave to file reply to defendant's supplemental brief filed. Copies (2) to deft. ALLOWED SEP. 30, 1971.
Sep. 30, 1971	Plaintiff's reply to supplemental brief for the United States filed. Copies (4) to deft.
Oct. 7, 1971	Argued and submitted on the merits.
Oct. 18, 1971	Court entered order re supplemental briefs (due on: Nov. 5, 1971, Nov. 16, 1971 and Nov. 24, 1971). Copy to parties.
Nov. 5, 1971	Plaintiff's supplemental brief filed. Copies (2) to deft.
Nov. 16, 1971	Defendant's supplemental brief filed. Copies (2) to atty.
Nov. 24, 1971	Plaintiff's reply brief filed. Copies (2) to deft.
Feb. 18, 1972	Judgment for plaintiff, together with interest as provided by law, on the seven enumerated claims, with the amount of recovery to be determined pursuant to Rule 131(c) and with plaintiff's recovery subject to the two enumerated setoffs raised by defendant as set forth in the opinion. Opinion Per Curiam. Dissenting opinion by Judge Davis, in which Senior Judges Laramore and Durfee join in part and in which Judge Nichols joins. Dissenting opinion by Judge Nichols.
Jul. 19, 1972	Notice of filing (defendant) in Supreme Court of a petition for writ of certiorari (on July 17, 1972) No. 72-90. filed.
Oct. 27, 1972	Order of the Supreme Court, dated October 24, 1972, allowing certiorari filed.

IN THE
UNITED STATES COURT OF CLAIMS

[Caption Omitted]

PETITION

(Filed May 7, 1965)

*To the Honorable, the Chief Judge and the Associate Judges
of the United States Court of Claims:*

Plaintiff herein, Chicago, Burlington & Quincy Railroad Company, respectfully alleges:

1. Plaintiff, a corporation organized and existing under the laws of the State of Illinois, having its principal offices located at 547 West Jackson Boulevard, Chicago, Illinois, is, and at all times here pertinent was, engaged in the business of operating as a common carrier by rail in interstate commerce subject to the jurisdiction of the United States Interstate Commerce Commission (hereinafter referred to as the "I.C.C.").

2. This suit and the causes of action herein set forth arise under the Internal Revenue laws of the United States of America, and in particular, under the provisions of Chapter 1 of the Internal Revenue Code of 1954 (hereinafter referred to as "the Code"), Title 26, United States Code. Jurisdiction to hear and determine these causes of action at this time is conferred upon this Court by §§ 6532 (a), 7422(a), and 7851(a)(6)(C)(iv) of the Code, and by §§ 2401 and 2501 of the Judicial Code, Title 28, United States Code. Jurisdiction of the subject matter is conferred upon this Court by § 1491 of Title 28, United States Code.

3. This suit is brought to recover \$492,290.25 (or such other amount as may be found legally due) of unrefunded Federal income tax, plus \$3,105.77 in deficiency interest paid by plaintiff into the Treasury of the United States for its tax calendar year 1955, plus 6% per annum statutory interest on both sums as provided by law.

4. Plaintiff timely filed its Federal income tax return for 1955 with the United States District Director of Internal Revenue, Chicago, Illinois, and paid the tax shown by such return to be due for the year 1955 in the following amounts and on or about the dates hereinafter indicated:

Taxable Year	Date of Payment	Amount of Tax Paid
1955	September 15, 1955	\$ 445,000.00
	December 15, 1955	445,000.00
	March 15, 1956	5,151,000.00
	June 15, 1956	4,799,051.48
Total		<u>\$10,840,051.48</u>

Upon audit of plaintiff's Federal income tax return for 1955, the Secretary of the Treasury or his delegate (hereinafter referred to as "the Commissioner") determined plaintiff's Federal income tax liability for 1955 was \$11,145,531.66 and plaintiff accordingly was assessed with, and on or about August 16, 1957, paid into the Treasury of the United States, additional Federal income taxes for 1955 totaling \$305,480.18, plus \$20,458.80 of deficiency interest. Of the foregoing total tax of \$11,145,531.66, plus \$20,458.80 of deficiency interest, paid by plaintiff into the Treasury of the United States only \$256,349.64 in tax and \$17,353.03 in deficiency interest have ever been refunded to plaintiff.

5. Plaintiff at all times here pertinent, including but not limited to the tax calendar year 1955, has kept its corporate books of account in accordance with the rules and regulations prescribed by the I.C.C. which included the maintenance of its books of account on the basis of the calendar year commencing January 1 in accordance with the accrual method of accounting. Plaintiff has uniformly filed its Federal income tax returns in conformity with the accounting methods upon which its corporate books of account were kept in these respects, i.e., on the basis of the calendar year commencing January 1 and pursuant to the accrual method of accounting. Certain of plaintiff's property accounts, including I.C.C. Account 9—Rails, both for I.C.C. and for Federal income tax purposes during 1955 and all other pertinent times were uniformly maintained on the retirement-betterment method of accounting for depreciation.

6. In determining the Federal income tax liability of plaintiff for 1955, the Commissioner erred by illegally, erroneously, and wrongfully failing and refusing to allow plaintiff:

(a) an appropriate deduction for depreciation totaling \$52,789.22 suffered in 1955 on certain depreciable property held throughout 1955 by plaintiff for use in its trade or business and acquired by plaintiff prior to June 22, 1954,

through donations as contributions to its capital from various States or political subdivisions thereof.

(b) appropriate tax treatment under § 1231 of the Code for some \$211,584.09 of excess salvage recovered in 1955 upon ordinary retirements made from groups of equipment which had been placed on a remaining life basis, as of January 1, 1929, and to which since January 1, 1929, no new equipment had been added.

(c) appropriate tax treatment under § 1231 of the Code for some \$83,186.35 of proceeds realized by plaintiff in 1955 by reason of the destruction of certain of plaintiff's rolling stock in that year on railroad lines other than plaintiff's.

(d) appropriate deductions totaling \$140,808.00 for the costs incurred in 1955 in effecting the welding together of 39-foot lengths of steel rail to form 78-foot lengths placed in service in 1955.

(e) appropriate deductions from gross income totaling \$121,826.70 representing sums accrued and paid by plaintiff in 1955 for the purpose of protecting and maintaining plaintiff's rail right-of-way and track in operable condition.

(f) appropriate tax treatment under § 1341 of the Code, as retroactively amended by § 60 of Public Law 85-866, officially entitled the Technical Amendments Act of 1958 (72 Stat. 1606, 1647-1648, 26 U.S.C. § 1341) enacted September 2, 1958, of certain repayments made in 1955 by plaintiff to the United States Government of transportation charges collected by plaintiff from the United States in earlier years under claim of right and appropriate Federal income and/or excess profits taxes paid thereon for such earlier years.

7. The facts upon which plaintiff relies in support of the errors alleged in subparagraph 6(a) are as follows:

(a) Prior to June 22, 1954, plaintiff acquired certain facilities, donated as contributions to its corporate capital by various States or political subdivisions thereof. These contributed facilities were properly includible in plaintiff's depreciation basis for roadway properties (i.e., I.C.C. Accounts 3 (Grading), 6 (Bridges), 27 (Signals), and 39 (Public Improvements)), and as such were subject to depreciation under the straight-line method. Nevertheless the Commissioner has wrongfully excluded the costs of such

contributed facilities from plaintiff's depreciable asset basis in computing plaintiff's Federal income tax liability.

(b) The Commissioner by reason of his foregoing action has wrongfully deprived plaintiff of additional depreciation deductions for 1955 of \$52,789.22, and thereby wrongfully caused plaintiff to overpay its Federal income tax for 1955, as properly computed, by \$27,450.39 ($\$52,789.22 \times 52\%$).

(c) The donations improperly excluded from plaintiff's investment accounts by the Commissioner were as follows:

	Account 3 (Grading)	Account 6 (Bridges)	Account 27 (Signals)	Account 39 Public Improvements
	\$5,850.78	\$1,528,403.54	\$548,876.82	\$63,009.39
Rate of Straight-Line Depreciation	2.29%	2.14%	3.33%	2.65%
Amount of Additional Depreciation	\$133.98	\$32,707.84	\$18,277.60	\$1,669.80

8. The facts upon which plaintiff relies in support of the errors alleged in subparagraph 6(b) are as follows:

(a) Plaintiff upon its disposition through normal retirements during 1955 of certain depreciable assets realized \$211,584.09 in excess of such assets' adjusted tax basis for gain. The assets upon which this excess salvage was realized in 1955 comprised units of rolling stock equipment which had been placed on a remaining life basis as of January 1, 1929, no new equipment being added to this group of units after January 1, 1929.

(b) The \$211,584.09 so realized in 1955 by plaintiff in excess of its adjusted tax basis for gain upon its disposition through normal retirements in 1955 of the assets in question from its closed equipment accounts frozen as to additions since January 1, 1929, was erroneously taxed by the Commissioner as ordinary income instead of gain taxable as provided in § 1231.

(c) Plaintiff's realization in 1955 of this salvage in excess of that originally and properly estimated as of January 1, 1929, was due to price rises resulting from long-term inflationary trends and not from originally incorrect estimates of the equipment's useful economic life in plaintiff's hands.

(d) The amount of tax paid by plaintiff through treat-

ing excess salvage as ordinary income was \$110,023.73 (\$211,584.09 x 52%), whereas the proper tax computed at capital gains rate was \$52,896.02 (\$211,584.09 x 25%). Plaintiff has thus overpaid its tax on this count by \$57,127.71.

9. The facts upon which plaintiff relies in support of the errors alleged in subparagraph 6(c) are as follows:

(a) During 1955, certain of plaintiff's freight cars were destroyed by casualty while in the possession of other railroad corporations. Plaintiff received a total of \$83,186.35 as compensation for its losses from the other railroads upon whose lines the casualties were suffered.

(b) All of plaintiff's equipment here in issue had been certified for amortization under § 124A of the Internal Revenue Code of 1939, or § 168 of the Code to the following extent:

Car Number	Percent Amortized at Time of Casualty Loss
61794	70%
60860	70%
18317	80%
60309	70%
171315	70%
76255	70%
17914	80%
61283	70%
76247	70%
17643	80%
18587	70%
18374	80%
60798	70%

(c) The Commissioner has erroneously classified as ordinary income so much of the § 1231 gain realized by plaintiff from the receipt of compensation from the carriers upon the lines of which the casualties to plaintiff's freight cars occurred as was equal to the difference between the amortization allowed up to the dates of the casualties and the amount of normal straight-line depreciation which would have been otherwise allowable.

(d) Plaintiff's freight cars so destroyed "off-line" were neither sold nor exchanged within the meaning and

intendment of § 1238 of the Code. Taxpayer is justly and properly entitled to treat its entire gain resulting from its receipt of compensation for the off-line wreck during 1955 of its freight cars as § 1231 gain taxable at capital gains rates of 25% instead of 52%.

(e) Plaintiff has paid tax of \$14,595.85 upon its receipt of \$83,186.35 by reason of the off-line destruction of the foregoing freight cars whereas the proper tax so payable by it was only \$7,017.24. Accordingly, plaintiff, under this count, is entitled to recover \$7,578.61 in tax.

10. The facts upon which plaintiff relies in support of the errors alleged in subparagraph 6(d) are as follows:

(a) Plaintiff throughout 1955 and at all other times here material has been subject to the regulatory jurisdiction of the I.C.C. and has maintained its corporate books of account in accordance with the Uniform System of Accounts for Railroad Companies prescribed by the I.C.C.

(b) I.C.C. Account 9 is and was labeled "Rails" and in this Account plaintiff, as prescribed, has continuously recorded its investment in rail. The assets recorded in Account 9 at all times here pertinent have been subject to depreciation, both for I.C.C. and for Federal income tax purposes, under the retirement-betterment method. Where regularly employed, as has uniformly been done by plaintiff, the retirement-betterment method of accounting for depreciation serves accurately to reflect taxable income for Federal income tax purposes.

(c) Under the retirement-betterment method of accounting for depreciation no deduction is allowed or allowable for exhaustion, wear and tear or normal obsolescence suffered by property accounted for under this method until such time as individual units of property are either permanently retired or replaced in kind. Upon retirement without replacement the full cost or other tax basis of such property less salvage value is allowable as a depreciation deduction. Upon retirement by reason of replacement strictly in kind, the current cost of the replacement property is allowable as a depreciation deduction while the cost of the replaced property remains capitalized on the books. Upon retirement of property by reason of a replacement which constitutes a betterment, the cost of the replacement property is allowable as a depreciation deduction in an amount equal to the cost of effecting a replacement strictly

in kind, with the balance of the total replacement cost, i.e., the cost of effecting the betterment, being added on the books to the capitalized cost of the property replaced.

(d) Plaintiff in accounting for the cost of replacing rail has uniformly during 1955 and at all other times here material charged the gross cost of the new rail installed to capital account at current prices and at the same time credited the weight of the replaced rail multiplied by the same price per ton to capital account and charged operating expense with a like sum. The net effect has been that only the added weight of rail has been actually charged to capital account at current prices, as required by I.C.C. accounting instructions and the retirement-betterment method of accounting for depreciation for Federal income tax purposes. In consequence, the total amount reflected in Account 9 is not the current cost of the entire new length of rail laid but reflects rather a series of charges based on prices in effect when replaced rail was earlier installed at lesser weights.

(e) During 1955, plaintiff in a substantial number of instances replaced two 39-foot lengths of steel rail with one 78-foot length of rail. The standard length of rail bought from the steel mills was 39 feet and plaintiff completed the manufacturing process necessary to produce a rail of 78 feet in length by welding two 39-foot lengths together. The cost to plaintiff of effecting such weld was an integral part of the aggregate cost of acquiring rails 78 feet in length. This aggregate cost constituted the price of the replacement unit being substituted for two 38-foot length rails for purposes of applying the retirement-betterment method of accounting. Thus only that portion of the cost of effecting the welding together of two 39-foot lengths of steel rail into a single 78-foot length as was properly attributable to the increased pattern weight of rail installed over the rail removed constituted a betterment properly subject to being charged to capital account. The remaining cost of the weld was properly deductible as depreciation in the year incurred and placed in service.

(f) The Commissioner has erroneously and wrongfully capitalized the entire cost incurred by plaintiff in effecting the welding together of 39-foot lengths of rail to form 78-foot lengths of rail installed in 1955. The cost to plaintiff of effecting such welding together of rail installed

in 1955 was \$155,748 and the Commissioner has capitalized this entire sum. In fact, only \$14,940 of such \$155,748 total cost was properly attributable to the increased pattern weight of welded rail installed in 1955 over unwelded rail replaced in that year, and so was properly chargeable to capital account. The remaining \$140,808 of welding costs incurred by plaintiff in 1955 was properly chargeable to operating expense as an integral part of the cost per ton of welded new rail of the same pattern weight as the unwelded rail replaced. Accordingly, plaintiff is justly entitled under this count to a refund of income tax of \$73,220.16 ($\$140,808 \times 52\%$).

11. The facts upon which plaintiff relies in support of the errors alleged in subparagraph 6(e) are as follows:

(a) During 1955 plaintiff incurred costs totaling \$121,826.70 for purposes of protecting and maintaining its rail right-of-way and track in operable condition and not for the purposes of improving or bettering such property.

(b) The expenditures here in question, which neither extended the normal life nor increased the capacity of the affected properties, were incurred in placing rip rap, strengthening dikes, levees, jetties and ditches, and otherwise controlling and channeling the flow of various surface waters.

(c) The amount of tax refund due plaintiff by reason of these expenditures is \$63,349.88 ($\$121,826.70 \times 52\%$).

12. The facts upon which plaintiff relies in support of the errors alleged in subparagraph 6(f) are as follows:

(a) During 1955, plaintiff, by reason of the Government's entitlement to land grant carriage rates on certain charges made for the rendition of transportation service in earlier years, was forced by action of the General Accounting Office (hereinafter referred to as the "GAO") to refund certain sums to the Federal Government. These overcharges had been returned as income by plaintiff in the earlier years when its right to receive payment first accrued and Federal tax thereon had been duly paid. Such overcharges were attributable to plaintiff's failure properly to accord the Government the special land grant rates to which the various shipments in question were ultimately determined to be entitled by the GAO.

(b) Section 1341 of the Code, as amended by § 60 of the Technical Changes Act of 1958, is mandatory in its

operations. Thus these land grant refunds made during 1955 by plaintiff to the Government must either be taken as a deduction in 1955 or excluded from income in the earlier years returned, whichever treatment affords plaintiff the greater tax benefit.

(c) Upon the audit of plaintiff's refund claim based upon § 1341, as amended, the Commissioner determined that plaintiff was justly entitled to recover \$490,315.14 in tax out of a total claimed refund sought by plaintiff of \$496,887.10.

(d) Despite the Commissioner's audit finding that plaintiff was entitled to recover \$490,315.14 in tax on this issue, the sum of \$222,448.20 in tax plus \$41,115.30 in tax, or \$263,563.50 in all, has been wrongfully and illegally withheld from plaintiff by the Commissioner. Plaintiff is justly entitled to recover not less than \$263,563.50 in tax on this count.

13. Appropriate claims for refund on Form 843 were timely filed by plaintiff for its tax calendar year 1955 on or about February 16, 1959, with the United States District Director of Internal Revenue, Chicago, Illinois. All such refund claims have now been on file in excess of six months. The earliest final action denying recovery on these refund claims was taken by the Commissioner through the mailing to plaintiff under date of May 27, 1963, of statutory notices of disallowance. The reasons set forth by plaintiff in support of the said claims on Form 843 were substantially in accordance with the facts hereinabove alleged.

14. This suit is timely filed, i.e., more than six months after the due filing of appropriate refund claims and within two years of the date of any such claims' formal rejection by the Commissioner.

15. Plaintiff is the sole owner of the claims here sued upon, and no assignment or transfer thereof, or any part thereof, or interest therein, has been made by plaintiff.

16. No action on these claims has been taken by the Congress of the United States, or by any Department of the Government, except as hereinbefore set forth.

17. Plaintiff is justly entitled to recover the amounts claimed herein from the United States of America.

WHEREFORE, plaintiff prays judgment against the United States of America upon the facts and the law for the recovery of \$492,290.25 in income taxes, plus \$3,105.77 of

deficiency interest, plus interest on both sums at the rate of 6% per annum as provided for by law, and for such other and further relief as this Court may deem proper.

Respectfully submitted,
/s/ Robert T. Molloy
ROBERT T. MOLLOY
Counsel for Plaintiff
1527 New Hampshire Avenue, N. W.
Washington, D. C. 20036

Of Counsel:

ELDON MARTIN

RICHARD T. CUBBAGE

547 West Jackson Boulevard
Chicago, Illinois 60606

GERALD J. O'ROURKE, JR.

ROBERT E. SIMPSON

1527 New Hampshire Avenue, N. W.
Washington, D. C. 20036

IN THE UNITED STATES COURT OF CLAIMS

[Caption Omitted]

ANSWER

The defendant, United States of America, by its attorneys, John B. Jones, Jr., Acting Assistant Attorney General, and Sheldon P. Migdal, attorney, United States Department of Justice, denies all allegations of plaintiff's petition not admitted, qualified or expressly referred to below.

Further answering the petition, defendant:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1.

2. Denies the allegations of the first and second sentences of paragraph 2. Admits the allegations of the third sentence of paragraph 2.

3. Admits the allegations of paragraph 3, except denies that plaintiff is entitled to recover.

4. Admits the allegations of paragraph 4, except denies knowledge or information sufficient to form a belief as to the truth of the allegations of the last sentence thereof.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5.

6(a)-(f). Denies the allegations of paragraphs 6(a) through (f).

7(a). Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7(a) except denies the allegations of the last sentence thereof.

7(b) and (c). Denies the allegations of paragraphs 7(b) and (c).

8(a). Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8(a).

8(b). Denies the allegations of paragraph 8(b).

8(c). Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8(c).

8(d). Denies the allegations of paragraph 8(d).

9(a) and (b). Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 9(a) and (b).

9(c)-(e). Denies the allegations of paragraphs 9(c) through (e).

10(a)-(e). Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 10(a) through (e).

10(f). Denies the allegations of paragraph 10(f).

11(a)-(c). Denies the allegations of paragraphs 11(a) through (c).

12(a)-(c). Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 12(a) through (c).

12(d). Denies the allegations of paragraph 12(d).

13. Denies the allegations of paragraph 13, except admits that plaintiff filed eight claims for refund for 1955 on February 16, 1959, one claim on April 14, 1959, and two claims on May 29, 1959, all of which were disallowed on May 27, 1963.

14. Admits the allegations of paragraph 14.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16.

17. Denies the allegations of paragraph 17.

FURTHER DEFENSES

As a further defense defendant alleges:

18. On its income tax return for 1955, plaintiff claimed a foreign tax credit for taxes paid to Mexico in the amount of \$85,656.87. These taxes were imposed by Mexico on the daily rentals paid to plaintiff for use of its railroad cars by Mexican railroads in that nation.

19. This tax imposed by Mexico was not a creditable foreign tax within the meaning of Section 901 of the Internal Revenue Code of 1954. Thus, plaintiff was not entitled to a foreign tax credit for any part of the tax paid to Mexico in 1955.

20. Plaintiff did not realize any taxable income from sources within Mexico during the taxable year 1955. Section 862, Internal Revenue Code of 1954. Therefore, even if it should be determined that this tax imposed by Mexico was a creditable foreign tax within the meaning of Section 901 of the Internal Revenue Code of 1954, plaintiff is not entitled to any foreign tax credit for this Mexican tax by reason of the limitation on foreign tax credit provided in Section 904 of the Internal Revenue Code of 1954.

21. Through error, no deficiency in income tax was assessed against plaintiff in respect to the matters described in paragraph 18 through 20 hereof.

22. If all or any part of the issues raised in plaintiff's petition are determined in its favor, the amount of any overpayment determined for the taxable year in issue should be reduced by the additional income tax payable as a result of allowing the tax paid to Mexico as a deduction in accordance with the provisions of Section 164 of the Internal Revenue Code of 1954, rather than as a credit against the federal income tax under Section 901 of the Internal Revenue Code of 1954.

WHEREFORE, defendant, having fully answered plaintiff's petition, prays that it be dismissed with prejudice, that plaintiff take nothing in this suit and that defendant be allowed its costs herein.

JOHN B. JONES, JR.

Acting Assistant Attorney General

SHELDON P. MIGDAL
Attorney

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
DONATIONS EXCLUDED FROM ROADWAY DEPRECIATION BASE

14 a & b LOCATION AND TYPE OF FACILITY		DATE A.F.E. INSTALLED	PRIMARY INVESTMENT ACCOUNTS			TOTAL	15 DONOR	16 DATE OF AGREEMENT
			17 a ACCT. 6 BRIDGES	17 a ACCT. 27 SIGNALS	17 a ACCT. 39 PUBLIC IMPRV.			
<i>Line Chicago to Aurora, Ill.</i>								
Highway undercrossing, Br. 13.55	23171	1932	\$ 1,668.88			\$ 1,668.88	State of Illinois	10-30-30
Highway undercrossing, Br. 30.52	24530	1932	52,957.80			52,957.80	State of Illinois	11-13-33
Highway undercrossing, Br. 11.53	26003	1937	58,791.42			58,791.42	State of Illinois	3-3-36
Raise River Bridge 11.39 acct. of Br. 11.53	26003	1937	9,752.67			9,752.67	State of Illinois	3-3-36
Highway undercrossing, Br. 24.68	16450	1936	22,641.31			22,641.31	State of Illinois	12-30-30
Highway undercrossing, Br. 31.60	25048	1936	33,254.12			33,254.12	State of Illinois	9-19-34
Highway crossing signals—Western Springs	41419	1949		\$ 7,142.16		7,142.16	Cook County	2-17-48
Highway crossing signals—Berwyn	45106	1949		13,977.27		13,977.27	Cook County	9-11-47
<i>Aurora—Graham Jct., Ill.</i>								
Highway undercrossing, Br. 46.65	25049	1936	33,863.62			33,863.62	State of Illinois	8-14-34
Highway undercrossing, Br. 83.66	25397	1936	32,871.51			32,871.51	State of Illinois	2-13-35
Highway undercrossing, Br. 129.47	8385	1924	4,170.68			4,170.68	State of Illinois	4-10-24
Highway undercrossing, Br. 154.67	8380	1924	5,563.46			5,563.46	State of Illinois	4-10-24
Highway undercrossing, Br. 202.50	9209	1927	7,402.49			7,402.49	State of Illinois	12-2-25
<i>Graham, Ill. to Ill.—Iowa State Line</i>								
Highway crossing signals, Monmouth	84869	1954		11,875.54		11,875.54	State of Illinois	3-9-53
<i>Galesburg Terminal, Ill.</i>								
Highway Crossing Signals	45552	1947		5,697.96		5,697.96	State of Illinois	6-10-47
<i>Aurora—Wisconsin State Line, Ill.</i>								
Sugar Grove Highway Crossing Signals	25712-3	1936		980.21		980.21	State of Illinois	1-26-35
Highway undercrossing, Br. 44.68	26071	1937	47,648.92			47,648.92	State of Illinois	7-2-36
Highway undercrossing, Br. 122.16	24081	1934	10,276.19			10,276.19	State of Illinois	10-20-33
Highway crossing signals (Blanding)	41426	1943		3,494.92		3,494.92	State of Illinois	9-12-41
Highway overcrossing, Br. 98.70	18550	1929			\$19,340.01	19,340.01	State of Illinois	9-8-27
Highway crossing signals (Rochelle)	48301	1953		8,314.73		8,314.73	State of Illinois	10-3-52
<i>Aurora—Streator, Paw Paw—Sterling, Ill.</i>								
Highway undercrossing, Br. 41.25	29035	1938	4,855.40			4,855.40	State of Illinois	1-5-38
Highway crossing signals (Serena)	29455	1939		2,759.87		2,759.87	State of Illinois	10-24-38
Highway undercrossing, Br. 42.62A	23655	1935	14,542.18			14,542.18	State of Illinois	9-29-34
Highway crossing signals (Yorkville)	45597	1948		3,141.70		3,141.70	State of Illinois	9-23-47
<i>Streator—Kasbeer, Mendota—Denrock, Ill.</i>								
Highway Crossing signals, Van Orin, Ohio	25712-1	1936		\$ 2,637.37		\$ 2,637.37	State of Illinois	1-26-35
Highway Crossing signals, Deer Grove	40491	1941		1,812.24		1,812.24	State of Illinois	7-11-40
Highway Crossing signals, Ohio	40495	1941		1,742.78		1,742.78	State of Illinois	7-11-40
Highway Crossing signals, Streator	45097	1947		1,406.26		1,406.26	State of Illinois	4-8-47
Highway Crossing signals, Prophetstown	45911	1949		959.91		959.91	State of Illinois	2-5-48
Highway Crossing signals, Walnut	29451	1940		3,057.49		3,057.49	State of Illinois	10-24-38

DONATIONS EXCLUDED FROM ROADWAY DEPRECIATION BASE
(Continued)

LOCATION AND TYPE OF FACILITY	A.F.E.	DATE INSTALLED	PRIMARY INVESTMENT ACCOUNTS			TOTAL	DONOR	DATE OF AGREEMENT
			ACCT. 6 BRIDGES	ACCT. 27 SIGNALS	ACCT. 39 PUBLIC IMPRV.			
<i>Davis Jct.—Rockford, Ill.</i>								
Highway Crossing Signals, Davis Jct.	26821	1936		694.94		694.94	State of Illinois	5-16-34
Highway Crossing Signals, Rockford	46260	1950		2,215.49		2,215.49	State of Illinois	8-31-28
Overhead Highway Bridge, Rockford	46981	1952			\$ 2,349.12	2,349.12	City of Rockford	11-3-50
<i>Galesburg—Quincy, Ill.</i>								
Highway undercrossing, Br. 236.99	25056	1935	\$27,509.81			27,509.81	State of Illinois	8-8-34
Highway undercrossing, Br. 177.65	24683	1934	18,756.44			18,756.44	State of Illinois	11-13-33
Highway undercrossing, Br. 247.27	8312	1924	5,278.19			5,278.19	State of Illinois	11-27-33
Highway undercrossing, Br. 226.26	20904	1930	6,045.45			6,045.45	State of Illinois	2-1-23
Crossing Signals (Ellington, Bushnell, Quincy)	25712	1936		4,826.81		4,826.81	State of Illinois	1-26-35
Crossing Signals (Macomb)	45474	1948		610.00		610.00	State of Illinois	6-18-47
<i>Galesburg—Savanna, Ill.</i>								
Crossing Signals (Fulton, Opheim)	29460	1939		3,251.42		3,251.42	State of Illinois	10-24-38
Crossing Signals (Colona)	29467	1939		1,390.00		1,390.00	State of Illinois	10-25-38
Crossing Signals (Briar Bluff)	26740	1937		625.82		625.82	State of Illinois	11-5-36
Crossing Signals (5 locations)	25712	1936		6,781.84		6,781.84	State of Illinois	1-26-35
Crossing Signals (Rock Island, Moline)	40132	1941		34,995.98		34,995.98	State of Illinois	7-25-39
Crossing Signals (Rio)	45463	1948		290.75		290.75	State of Illinois	6-11-47
Crossing Signals (Hillsdale)	46767	1950		2,069.00		2,069.00	State of Illinois	10-13-49
Crossing Signals (M.P. 33.81 and 69.03)	47445	1951		6,184.90		6,184.90	Whiteside County	2-1-51
<i>Gales—New Boston</i>								
Highway undercrossing, Br. 4.29	24047	1932	2,573.79			2,573.79	State of Illinois	5-23-32
Crossing Signals (Viola)	25712	1936		1,219.27		1,219.27	State of Illinois	1-26-35
<i>Galesburg—Peoria, Buda—Rushville, Ill.</i>								
Highway undercrossing, Br. 21.78	16809	1927	1,551.80			1,551.80	State of Illinois	7-9-26
Crossing Signals (4 locations)	25712	1936		4,832.04		4,832.04	State of Illinois	1-26-35
Crossing Signals (Farmington—Lewistown)	29456	1939		4,676.30		4,676.30	State of Illinois	10-24-38
Overhead Viaduct, Br. 1.91	16815	1927			17,438.80	17,438.80	State of Illinois	7-12-26
Crossing Signals (Bryant)	40489	1940		\$ 1,419.04		\$ 1,419.04	State of Illinois	7-11-40
Crossing Signals (Lewistown)	48362	1953		2,811.99		2,811.99	State of Illinois	10-7-52
<i>Lewistown—Fairview, Ill.</i>								
Crossing Signals (Cuba)	40490	1940		1,575.15		1,575.15	State of Illinois	7-11-40
<i>Illinois Junction—Quincy</i>								
Highway undercrossing, Br. 15.44	23102	1931	\$ 2,311.80			2,311.80	State of Illinois	6-5-31
Crossing Signals (Carthage)	25712	1936		1,497.77		1,497.77	State of Illinois	1-26-35
Crossing Signals (Ursa)	29453	1939		1,810.29		1,810.29	State of Illinois	10-24-38
<i>Concord—E. Alton, Ill.</i>								
Crossing Signals (Chapin)	25712	1936		1,088.22		1,088.22	State of Illinois	1-26-35
Crossing Signals (Piassa, Alsey)	29454	1939		4,598.42		4,598.42	State of Illinois	10-24-38
Crossing Signals (Riggston)	40543	1940		1,307.26		1,307.26	State of Illinois	7-11-40
Crossing Signals (Medora)	40497	1940		1,642.96		1,642.96	State of Illinois	7-11-40
Crossing Signals (Winchester)	47718	1951		714.74		714.74	State of Illinois	3-16-51

DONATIONS EXCLUDED FROM ROADWAY DEPRECIATION BASE
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LOCATION AND TYPE OF FACILITY	A.F.E.	DATE INSTALLED	PRIMARY INVESTMENT ACCOUNTS			TOTAL	DONOR	DATE OF AGREEMENT
			ACCT. 6 BRIDGES	ACCT. 27 SIGNALS	ACCT. 39 PUBLIC IMPRV.			
<i>Beardstown—Bio, Ill.</i>								
Highway undercrossing, Br. 185.38	16093	1926	3,037.03			3,037.03	State of Illinois	1-8-26
Crossing Signals (3 locations)	25712	1936		3,817.73		3,817.73	State of Illinois	1-26-35
Crossing Signals (Waltonville)	25712	1936		2,952.24		2,952.24	State of Illinois	1-26-35
Overhead viaduct, Br. 135.17	16810	1927			\$ 2,213.33		State of Illinois	8-25-26
Crossing Signals, Table Grove	40925	1941		4,807.02		4,807.02	State of Illinois	2-14-41
Crossing flood lights	44592	1946		563.12		563.12	Fulton County	11-23-45
<i>Concord—Centralia, Ill.</i>								
Highway undercrossing, Br. 106.21	26235	1936	3,304.62			3,304.62	State of Illinois	1-7-36
Crossing Signs (Burnett)	26453	1937		647.92		647.92	State of Illinois	7-2-36
Crossing Signs (Smithboro)	41031	1942		3,053.32		3,053.32	State of Illinois	4-17-41
<i>Centralia—Metropolis, Ill.</i>								
Highway undercrossing, Br. 161.12	8365	1924	2,700.38			2,700.38	State of Illinois	
Crossing Signals (Mermet)	29099	1939		1,309.31		1,309.31	State of Illinois	12-16-37
Crossing Signals (Sesser)	40496	1941		4,565.06		4,565.06	State of Illinois	7-11-40
Raise Br. for undercrossing, Br. 3.41	41536	1941	463.45			463.45	State of Illinois	11-25-41
Flood lights at crossing (W. Frankfort)	41201	1942		1,072.46		1,072.46	State of Illinois	7-11-41
Crossing Signals (W. Frankfort)	45161	1947		\$ 2,343.80		\$ 2,343.80	State of Illinois	4-26-47
Crossing Signals (Waltonville, Centralia)	25712	1936		2,952.24		2,952.24	State of Illinois	1-26-35
Crossing Signals (W. Frankfort)	48399	1953		2,253.04		2,253.04	State of Illinois	11-6-52
<i>Mediapolis—Washington, Ia.</i>								
Crossing Signals—Mediapolis	40501	1940		1,003.51		1,003.51	State of Iowa	5-16-40
<i>Albia—Des Moines</i>								
Crossing Signals (Knoxville)	27986	1938		2,964.79		2,964.79	State of Iowa	1-4-38
Crossing Signals (Albia) (Harvey)	29588	1939		4,648.36		4,648.36	State of Iowa	8-22-39
Crossing Signals (Des Moines)	29591	1940		2,113.76		2,113.76	State of Iowa	1-8-40
Crossing Signals (Des Moines)	29590	1940		1,843.71		1,843.71	State of Iowa	1-8-40
<i>Burlington—Creston, Iowa</i>								
Highway crossing, Br. 225.25	26742	1937	\$35,971.89			35,971.89	State of Iowa	12-22-36
Highway undercrossing, Br. 333.77	24682	1937	26,043.76			26,043.76	State of Iowa	3-17-34
Crossing Signals, Agency City	27904	1938		2,760.72		2,760.72	State of Iowa	12-15-38
Crossing Signals (Mt. Pleasant)	29570	1939		3,390.37		3,390.37	State of Iowa	8-22-39
Highway Undercrossing, Br. 244.54	29772	1940	31,453.66			31,453.66	State of Iowa	1-23-40
Highway Undercrossing, Br. 255.49	24681	1934	20,587.00			20,587.00	State of Iowa	4-4-34
Highway viaduct crossing, Br. 208.61	22529	1930			\$ 4,019.14	4,019.14	State of Iowa	8-2-30
Highway undercrossing, Br. 334.07	19539	1928	7,815.54			7,815.54	State of Iowa	4-17-28
Crossing Signs (Chillicothe)	29571	1940		3,460.34		3,460.34	State of Iowa	8-22-39
Crossing Signs (Chillicothe)	29572	1940		4,036.02		4,036.02	State of Iowa	8-22-39
Crossing Signs (Albia)	29373	1940		3,034.46		3,034.46	State of Iowa	8-22-39
Crossing Signs (Russell)	29574	1940		3,826.94		3,826.94	State of Iowa	8-22-39
Crossing Signs (Thayer)	29575	1940		3,541.70		3,541.70	State of Iowa	8-22-39
Crossing Signs (Mt. Pleasant)	40891	1941		4,379.07		4,379.07	State of Iowa	2-18-41

DONATIONS EXCLUDED FROM ROADWAY DEPRECIATION BASE
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LOCATION AND TYPE OF FACILITY	A.F.E.	DATE INSTALLED	PRIMARY INVESTMENT ACCOUNTS			TOTAL	DONOR	DATE OF AGREEMENT
			ACCT. 6 BRIDGES	ACCT. 27 SIGNALS	ACCT. 39 PUBLIC IMPRV.			
<i>Creston—Missouri River</i>								
Highway undercrossing, Br. 393.66	26007-1	1937	39,598.26			39,598.26	State of Iowa	3-3-36
Crossing Signals (Nodaway)	27987	1938		3,147.86		3,147.86	State of Iowa	1-4-38
Crossing Signals (Prescott)	29576	1939		2,565.52		2,565.52	State of Iowa	8-22-39
Crossing Signals (Brooks)	48635	1954		2,953.63		2,953.63	Adams County, Ia.	4-6-53
<i>Cumberland—Mo. State Line, Ia.</i>								
Crossing Signals (Creston)	25984	1939		\$ 2,215.26		\$ 2,215.26	State of Iowa	8-22-39
Crossing Signals (Kent)	29585	1940		1,519.86		1,519.86	State of Iowa	1-8-40
Crossing Signals (Bedford)	29586	1940		2,413.30		2,413.30	State of Iowa	1-8-40
<i>Red Oak—Hamburg, Ia.</i>								
Crossing Signals (Riverton)	29583	1939		2,455.96		2,455.96	State of Iowa	8-22-39
<i>Viele—Bloomfield, Ia.</i>								
Crossing Signals (Viele)	44758	1947		981.17		981.17	State of Iowa	9-26-46
Crossing Signals (Donnellson)	29596	1940		2,626.77		2,626.77	State of Iowa	8-22-39
<i>Sedan—Humeston, Ia.</i>								
Highway undercrossing, Br. 117.21	16814	1927	\$ 1,553.31			1,553.31	State of Iowa	11-29-26
Highway undercrossing, Br. 114.07	6832	1923	1,488.50			1,488.50	State of Iowa	11-23-23
Crossing Signals (Centerville)	29594	1940		1,896.21		1,896.21	State of Iowa	8-22-39
<i>Burlington—Mo. State Line, Ia.</i>								
Crossing Signals (Montrose)	23732	1932		476.67		476.67	State of Iowa	5-17-32
Crossing Signals (Bullard)	29579	1940		2,470.94		2,470.94	State of Iowa	8-22-39
Crossing Signals (Becks Siding)	29578	1940		2,400.47		2,400.47	State of Iowa	1-8-40
Crossing Signals (Ft. Madison)	29580	1940		1,756.34		1,756.34	State of Iowa	8-22-39
<i>Council Bluffs, Ia.</i>								
Highway Undercrossing, Br. 492.19	26516	1936	1,454.00			1,454.00	City of Council Bluffs	7-31-36
Highway Undercrossing, Br. 493.00	26515	1936	2,679.13			2,679.13	City of Council Bluffs	7-31-36
Bridge over Indian Creek—Br. 492.19B	16060	1951	3,448.24			3,448.24	U.S. Government	9-2-48
<i>Vulaca—Mo. State Line, Ia.</i>								
Crossing Signals (Clarinda)	29593	1939		2,065.19		2,065.19	State of Iowa	8-22-39
Crossing Signals (Clarinda)	40544	1941		1,242.22		1,242.22	State of Iowa	9-9-40
<i>Chariton—Mo. State Line, Ia.</i>								
Highway Undercrossing, Br. 8 44.24	20891	1929	4,642.70			4,642.70	State of Iowa	10-16-28
<i>Concordia—Nebraska State Line, Kansas</i>								
Highway undercrossing, Br. 49.20	31826	1939	7,891.78			7,891.78	State of Kansas	6-25-38
<i>LaClede—Unionville, Mo.</i>								
Highway Undercrossing, Br. 182.25	16808	1927	\$ 5,101.63			\$ 5,101.63	State of Missouri	2-7-27
<i>No. St. Louis—Iowa State Line</i>								
Highway Undercrossing, Br. 9.75	23176	1932	36,996.12			36,996.12	City of St. Louis	6-2-31
Highway Undercrossing, Br. 9.92	23160	1932	43,408.82			43,408.82	City of St. Louis	6-2-31

DONATIONS EXCLUDED FROM ROADWAY DEPRECIATION BASE
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LOCATION AND TYPE OF FACILITY	A.F.E.	DATE INSTALLED	PRIMARY INVESTMENT ACCOUNTS			TOTAL	DONOR	DATE OF AGREEMENT
			ACCT. 6 BRIDGES	ACCT. 27 SIGNALS	ACCT. 39 PUBLIC IMPRV.			
<i>Hannibal—Brookfield, Mo.</i>								
Highway Undercrossing, Br. 12.21	22511	1931	8,686.66			8,686.66	State of Missouri	5-2-30
Highway Undercrossing, Br. 10.47	26006	1937	28,885.05			28,885.05	State of Missouri	11-11-35
Highway Undercrossing, Br. 6.92	9022	1926	4,189.83			4,189.83	State of Missouri	11-11-35
Highway Undercrossing, Br. 25.44	9204	1926	7,523.69			7,523.69	State of Missouri	11-11-35
Crossing Signals (Lingo)	44953	1948		\$ 2,857.92		2,857.92	State of Missouri	9-16-46
Crossing Signals (Anabel)	46786	1950		4,530.49		4,530.49	State of Missouri	7-31-49
<i>Old Monroe—Francis, Mo.</i>								
Crossing Signals, Wellsville	47523	1950		5,040.86		5,040.86	State of Missouri	12-2-50
<i>Cameron Jct.—No. Kansas City</i>								
<i>Brookfield—St. Joseph, Mo.</i>								
Highway Undercrossing, Br. 209.21	26004	1937	28,557.16			28,557.16	State of Missouri	11-26-35
Highway Undercrossing, Br. 211.03	26005	1937	43,851.58			43,851.58	State of Missouri	12-19-33
Highway Undercrossing, Br. 109.46A	24678	1935	16,347.11			16,347.11	State of Missouri	12-19-33
Highway Undercrossing, Br. 170.48	16347	1927	6,530.23			6,530.23	State of Missouri	1-2-27
Highway Undercrossing, Br. 135.48	16800	1928	6,611.77			6,611.77	State of Missouri	10-23-26
Crossing Signals (Phelps)	45062	1948		4,447.48		4,447.48	State of Missouri	12-21-46
Crossing Signals (No. Kansas City)	48681	1953		1,651.89		1,651.89	State of Missouri	5-4-53
Crossing Signals (No. Kansas City)	48674	1954		5,661.88		5,661.88	City of Kansas City	5-29-53
<i>St. Joseph—Iowa State Line, Mo.</i>								
Highway Undercrossing, Br. 77.16	26265	1937	5,479.03			5,479.03	State of Missouri	11-11-35
Highway Undercrossing, Br. 8-86.91	6324	1924	1,443.87			1,443.87	State of Missouri	11-20-24
Bridge over High Creek, Br. 136.20	46358	1950	39,669.33			39,669.33	U.S. Government	5-19-49
Crossing Signals (Craig)	48196	1953		9,125.97		9,125.97	State of Missouri	5-11-52
<i>Wyoming State Line—Billings, Montana</i>								
Highway Undercrossing, Br. 7.05	34127	1943	4,903.52			4,903.52	State of Montana	8-20-41
Crossing Signals (Wyola)	38838	1954		4,692.69		4,692.69	State of Montana	12-18-52
<i>Plattsmouth—Lincoln, Nebr.</i>								
Highway undercrossing, Br. 54.82	32304	1938	\$57,758.66			\$57,758.66	State of Nebraska	9-24-37
Crossing Signals (Lincoln)	32780	1939		\$ 3,843.91		3,843.91	State of Nebraska	6-14-38
Highway Undercrossing, Br. 55.58	32303	1939	51,643.80			51,643.80	State of Nebraska	6-1-38
Highway Undercrossing, Br. 7.07A	34119	1941	7,051.00			7,051.00	State of Nebraska	5-10-41
<i>Ashland—Prague, Nebr.</i>								
Highway Undercrossing, Br. 0.57	30272	1931	1,499.36			1,499.36	State of Nebraska	5-16-31
<i>Ashland—Laketon, Nebr.</i>								
Crossing Signals (Winslow)	32935	1939		1,911.37		1,911.37	State of Nebraska	6-14-38
Crossing Signals (Fremont)	32060	1936		1,458.27		1,458.27	State of Nebraska	7-14-36
Crossing Signals (Fremont)	32061	1936		1,058.62		1,058.62	State of Nebraska	7-15-36
Crossing Signals (Walthill)	33896	1941		2,182.40		2,182.40	State of Nebraska	8-14-40
<i>Laketon—O'Neill, Nebr.</i>								
Highway Undercrossing, Br. 26.26	11251	1926	1,754.51			1,754.51	State of Nebraska	4-14-25
Crossing Signals (Osmond)	32327	1937		1,242.03		1,242.03	State of Nebraska	12-15-37

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LOCATION AND TYPE OF FACILITY	A.F.E.	DATE INSTALLED	PRIMARY INVESTMENT ACCOUNTS			TOTAL	DONOR	DATE OF AGREEMENT
			ACCT. 6 BRIDGES	ACCT. 27 SIGNALS	ACCT. 39 PUBLIC IMPRV.			
<i>Lincoln—Kenesaw, Nebr.</i>								
Crossing Signals (Lincoln)	33333	1939		3,205.58		3,205.58	State of Nebraska	3-4-39
Crossing Signals (Lincoln)	33334	1939		3,311.08		3,311.08	State of Nebraska	3-4-39
Highway Undercrossing, Br. 156.42	31069	1936	76,861.62			76,861.62	State of Nebraska	12-4-33
Highway Undercrossing, Br. 137.82	8874	1923	4,417.34			4,417.34	State of Nebraska	Verbal
Crossing Signals (Ingleside)	32329	1938		1,232.04		1,232.04	State of Nebraska	12-15-36
Crossing Signals (Kenesaw)	33461	1940		4,200.60		4,200.60	State of Nebraska	6-19-39
Crossing Signals (Dorchester)	34331	1947		6,434.50		6,434.50	State of Nebraska	8-14-41
<i>Lincoln Terminal, Nebr.</i>								
Highway Undercrossing, Br. 1.60	31120	1936	2,401.08			2,401.08	State of Nebraska	1-4-35
Crossing Signals (Lincoln)	30990	1934		1,147.51		1,147.51	State of Nebraska	8-26-33
<i>Lincoln—Ravenna, Nebr.</i>								
Highway Undercrossing, Br. 55.90	32730	1939	48,623.63			48,623.63	State of Nebraska	8-8-38
Crossing Signals, (Grand Island)	32880	1939		2,871.52		2,871.52	State of Nebraska	6-14-38
Highway Undercrossing, Br. 19.54	30619	1933	6,171.00			6,171.00	State of Nebraska	10-25-32
<i>Seward—Columbus, Nebr.</i>								
Highway Undercrossing, Br. 66.42	31908	1936	\$15,166.07			\$15,166.07	State of Nebraska	4-13-36
<i>Aurora—Sargent, Nebr.</i>								
Crossing Signals, (Farwell)	33330	1940		\$ 1,564.41		1,564.41	State of Nebraska	3-4-39
Highway Undercrossing, Br. 14.01	52	1923	4,348.94			4,348.94	State of Nebraska	Verbal
Crossing Signals (Central City)	32325	1937		1,249.15		1,249.15	State of Nebraska	12-15-36
Crossing Signals (Aurora)	32330	1937		1,352.61		1,352.61	State of Nebraska	12-15-36
<i>Belo—Lester, Nebr.</i>								
Crossing Signals (Endicott)	37809	1950		2,476.17		2,476.17	State of Nebraska	6-6-49
Crossing Signals (Dawson)	33332	1939		3,135.08		3,135.08	State of Nebraska	3-4-39
Crossing Signals (Diller)	32884	1939		3,431.45		3,431.45	State of Nebraska	3-4-39
Crossing Signals (Wymore)	33331	1940		4,101.90		4,101.90	State of Nebraska	6-12-39
Crossing Signals (Kridler)	33473	1940		1,830.01		1,830.01	State of Nebraska	6-19-39
Highway Undercrossing, Br. 55.76	1006	1927	5,715.67			5,715.67	State of Nebraska	6-7-26
Crossing Signals (Red Cloud)	38094	1951		925.34		925.34	State of Nebraska	10-18-50
Crossing Signals (Odell)	37751	1950		3,705.48		3,705.48	State of Nebraska	2-14-50
Crossing Signals (Guide Rock)	37752	1950		4,239.02		4,239.02	State of Nebraska	2-14-50
Crossing Signals (Endicott)	37809	1950		2,562.97		2,562.97	State of Nebraska	6-1-49
Crossing Signals (Endicott)	38411	1951		4,221.35		4,221.35	State of Nebraska	4-17-50
<i>Lincoln—Table Rock, Nebr.</i>								
Crossing Signals (Roca)	32321	1937		1,781.86		1,781.86	State of Nebraska	12-15-36
<i>Kenesaw—McCook, Nebr.</i>								
Crossing Signals, (Edison)	32936	1939		3,879.59		3,879.59	State of Nebraska	6-14-38
Crossing Signals, (Arapahoe)	32324	1937		1,411.60		1,411.60	State of Nebraska	12-15-36
Crossing Signals, (Oxford Jet.)	33471	1940		3,429.48		3,429.48	State of Nebraska	6-19-39
Crossing Signals, (Arapahoe)	34428	1950		5,168.56		5,168.56	State of Nebraska	2-13-48
Crossing Signals, (Culbertson)	37753	1950		5,706.72		5,706.72	State of Nebraska	2-14-50
Crossing Signals, (Alma)	33848	1941		2,579.01		2,579.01	State of Nebraska	8-14-50

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LOCATION AND TYPE OF FACILITY	A.F.E.	DATE INSTALLED	PRIMARY INVESTMENT ACCOUNTS				TOTAL	DONOR	DATE OF AGREEMENT
			ACCT. 3 GRADING	ACCT. 6 BRIDGES	ACCT. 27 SIGNALS	ACCT. 39 PUBLIC IMPRV.			
<i>Other Locations in Nebraska</i>									
Crossing Signals (Red Cloud)	39238	1939			\$ 4,617.77		\$ 4,617.77	State of Nebraska	6-14-38
Crossing Signals (Fairmont)	32322	1937			1,438.46		1,438.46	State of Nebraska	12-15-36
Jetties (Orleans)	37236	1949	\$5,850.78				5,850.78	State of Nebraska	7-11-49
Crossing Signals (Holdrege)	32682	1940			1,366.06		1,366.06	State of Nebraska	6-14-38
Overhead Viaduct, near Curtis, Br. 75.32	811	1924				\$ 3,135.06	3,135.06	State of Nebraska	None
Crossing Signals (Bridgeport)	31941	1937			2,566.83		2,566.83	State of Nebraska	11-12-35
Undercrossing near Sidney	30703	1933		\$ 6,780.00			6,780.00	State of Nebraska	12-19-32
Crossing Signals (Minatare)	37468	1949			3,961.26		3,961.26	State of Nebraska	6-9-48
Crossing Signals (Scottsbluff)	37387	1951			13,532.26		13,532.26	State of Nebraska	9-27-50
Undercrossing near Dunning, Br. 214.88	31824	1936		6,580.28			6,580.28	State of Nebraska	2-8-36
Crossing Signals (Broken Bow)	32328	1937			1,720.39		1,720.39	State of Nebraska	12-15-36
Crossing Signals (Sweetwater)	32323	1937			2,020.31		2,020.31	State of Nebraska	12-15-36
Undercrossing near Alliance, Br. 366.17	31824	1936		31,373.34			31,373.34	State of Nebraska	2-8-36
Crossing Signals (Hemingford)	32320	1937			1,307.20		1,307.20	State of Nebraska	12-15-36
Crossing Signals (Hemingford)	37493	1949			6,135.83		6,135.83	State of Nebraska	6-9-49
Crossing Signals (Mullen)	37459	1949			2,959.98		2,959.98	State of Nebraska	6-9-48
Crossing Signals (Wilber)	32881	1939			2,074.92		2,074.92	State of Nebraska	6-14-38
Crossing Signals (Crete)	37256	1949			3,391.74		3,391.74	State of Nebraska	2-4-48
Crossing Signals (Thredord)	37756	1951			4,489.85		4,489.85	State of Nebraska	2-13-48
Crossing Signals (Sidney)	38511	1952			6,463.40		6,463.40	State of Nebraska	4-9-51
Crossing Signals (Chester)	39051	1954			5,073.60		5,073.60	State of Nebraska	11-17-53
<i>Locations in So. Dakota</i>									
Undercrossing near Custer, Br. 44.95	31823	1937		18,199.40			18,199.40	State of Nebraska	10-31-35
Undercrossing near Oreville, Br. 57.30	31759	1937		8,865.98			8,865.98	State of Nebraska	11-7-35
Crossing Signals, (Pluma)	32598	1938			4,156.60		4,156.00	State of Nebraska	
<i>Locations in Colorado</i>									
Crossing Signals (Otis)	37044	1949			6,488.34		6,488.34	State of Colorado	7-20-46
Crossing Signals (Denver)	33540	1941			2,068.18		2,068.18	State of Colorado	12-26-35
Undercrossing, (Denver), Br. 134	32383	1937		19,328.94			19,328.94	State of Colorado	8-31-37
Undercrossing, (Denver), Br. 539.86	32519	1938		67,598.51	3,001.36		70,599.87	State of Colorado	12-23-37
Undercrossing, (Denver), Br. 536.58	33760	1943		54,028.50			54,028.50	State of Colorado	12-11-40
Crossing Signals (Wiggins)	37757	1950			4,538.84		4,538.84	State of Colorado	12-1-49
Crossing Signals (Sterling)	33385	1937			1,765.63		1,765.63	State of Colorado	9-22-37
Crossing Signals (Sterling)	32740	1940			1,469.74		1,469.74	State of Colorado	9-22-37
Undercrossing, near Brush, Br. 453.66	32943	1938		\$ 24,430.26			\$ 24,430.26	State of Colorado	4-1-38
Crossing Signals, Denver	32725	1938			\$ 1,683.94		1,683.94	State of Colorado	9-22-37
Crossing Signals, Akron	32741	1940			2,867.95		2,867.95	State of Colorado	9-22-37
Crossing Signals, Higgins	33732	1940			2,137.15		2,137.15	State of Colorado	4-2-40
Crossing Signals, Derby	35389	1944			1,327.20		1,327.20	State of Colorado	12-22-43
Crossing Signals, Keenesburg	33539	1940			2,240.42		2,240.42	State of Colorado	12-22-39
Crossing Signals, Ackerman	32739	1940			1,260.96		1,260.96	State of Colorado	9-22-37
Crossing Signals, Wray	38874	1954			8,208.45		8,208.45	State of Colorado	1-12-53

DONATIONS EXCLUDED FROM ROADWAY DEPRECIATION BASE
(Continued)

LOCATION AND TYPE OF FACILITY	A.F.E.	DATE INSTALLED	PRIMARY INVESTMENT ACCOUNTS				TOTAL	DONOR	DATE OF AGREEMENT
			ACCT. 3 GRADING	ACCT. 6 BRIDGES	ACCT. 27 SIGNALS	ACCT. 39 PUBLIC IMPRV.			
<i>Locations in Wisconsin</i>									
Crossing Signals (Prairie DeChien)	26217	1936			2,826.83		2,826.83	State of Wisconsin	3-9-36
Crossing Signals (LaCrosse)	29095	1938			4,043.89		4,043.89	State of Wisconsin	11-22-37
Crossing Signals (Sullivan)	29920	1939			2,972.41		2,972.41	State of Wisconsin	7-11-39
Crossing Signals (Hager)	29903	1938			2,951.01		2,951.01	State of Wisconsin	11-22-37
Crossing Signals (Hager)	29904	1938			3,728.87		3,728.87	State of Wisconsin	11-22-37
Crossing Signals (Cochrane)	46070	1951			3,500.00		3,500.00	State of Wisconsin	12-22-50
Crossing Signals (Onalaska)	48213	1953			3,368.96		3,368.96	State of Wisconsin	4-9-52
<i>Locations in Wyoming</i>									
Crossing Signals (Torrington)	31735-1	1938			1,699.13		1,699.13	State of Wyoming	9-25-35
Crossing Signals (Torrington)	36703	1948			7,267.86		7,267.86	State of Wyoming	2-4-48
Undercrossing near Thermopolis	32229	1937		\$ 2,218.57			2,218.57	State of Wyoming	10-17-36
Undercrossing near (Casper)	33472	1941		43,711.78			43,711.78	State of Wyoming	11-21-39
Undercrossing near (Casper)	10068	1924		36,976.52			36,976.52	State of Wyoming	12-12-23
Undercrossing near (Siddons)	10965	1926		9,657.82			9,657.82	State of Wyoming	8-25-25
Crossing Signals (Denver)	31735-4	1939			1,185.81		1,185.81	State of Wyoming	9-25-35
Crossing Signals (Worland)	31735-5	1939			1,375.15		1,375.15	State of Wyoming	9-25-35
Crossing Signals (Kane)	31735-7	1939			1,274.13		1,274.13	State of Wyoming	9-25-35
Overcrossing near Greybull	15674	1931				\$ 5,987.61	5,987.61	State of Wyoming	10-22-25
Crossing Signals (Garland)	32767	1939			1,828.44		1,828.44	State of Wyoming	10-5-37
Crossing Signals (Frannie)	31735-6	1939			1,509.15		1,509.15	State of Wyoming	9-25-35
Overcrossing, Thermopolis, Br. 333.20	12823	1928				8,526.32	8,526.32	State of Wyoming	10-25-25
Crossing Signals (Douglas)	32768	1939			1,955.43		1,955.43	State of Wyoming	10-5-37
Crossing Signals (Ranchester)	31735-2	1939			2,080.44		2,080.44	State of Wyoming	9-25-35
Crossing Signals (New Castle)	31735-3	1939			1,455.73		1,455.73	State of Wyoming	9-25-35
Undercrossing near Wesser, Br. 527.73	31070	1934		17,788.42			17,788.42	State of Wyoming	12-11-33
Undercrossing near Gillette, Br. 598.46	12789	1928		10,845.96			10,845.96	State of Wyoming	11-25-25
			\$5,850.78	\$1,528,403.54	\$548,876.82	\$63,009.39	\$2,146,140.53		

DONATIONS EXCLUDED FROM ROADWAY DEPRECIATION BASE
(Continued)

RECAPITULATION

PRIMARY INVESTMENT ACCOUNTS

	ACCT. 3 GRADING	ACCT. 6 BRIDGES	ACCT. 27 SIGNALS	ACCT. 39 PUBLIC IMPRV.	TOTAL
1940 & Prior		1,375,127.72	250,218.14	60,660.27	1,686,006.13
1941		51,226.23	60,373.96		111,600.19
1942			4,125.78		4,125.78
1943		58,932.02	3,494.92		62,426.94
1944			1,327.20		1,327.20
1945					
1946			563.12		563.12
1947			16,863.69		16,863.69
1948			18,615.71		18,615.71
1949	5,850.78		45,016.49		50,867.27
1950		39,669.33	42,253.60		81,922.93
1951		3,448.24	33,568.44		37,016.68
1952			6,463.40	2,349.12	8,812.52
1953			27,526.58		27,526.58
1954			38,465.79		38,465.79
Totals	\$5,850.78	\$1,528,403.54	\$548,876.82	\$63,009.39	\$2,146,140.53

Office of
Engineer Capital Expenditures
October 22, 1965

[Defendant's Exhibit 3 DP]

[Mailed Sep. 20, 1944]

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
547 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS

Attention: Mr. H. W. Johnson
Vice-President and Comptroller

Gentlemen:

Reference is made to your letter dated February 5, 1943, in which you apply for permission to change from retirement to depreciation accounting with respect to road property.

Permission will be granted to change from retirement to depreciation accounting effective January 1, 1943, with respect to the accounts tabulated below, provided you irrevocably agree:

- (1) that a reserve for depreciation shall be computed as of December 31, 1942, on all the depreciable property included in these accounts in accordance with the summary tabulation set forth below;
- (2) that the remaining sum to be recovered through depreciation allowances shall be limited to the cost or other basis less the depreciation so accrued;
- (3) that neither the change of method nor the amount of depreciation so accrued shall have any effect on taxable net income for any year ending prior to January 1, 1943;
- (4) that the depreciation rates agreed to are subject to modification if subsequent experience indicates that revision is necessary in order to spread the cost of the assets over their remaining useful lives; such revision, however, is not to be made retroactive;
- (5) that complete depreciation accounting in accordance with all the applicable sections of the Internal Revenue Code and Regulations shall be adopted for those accounts;
- (6) that the reserve for depreciation accrued to the date of the change from retirement to depreciation accounting shall reduce accumulated earnings and profits in the determination of invested capital for excess profits tax purposes.

Account No.	Classification	Cost At 12/31/1942	Rate % *	Accrued Depreciation At 12/31/1942
3	Grading	\$ 8,017,435.00	1.80	\$ 2,475,184.00
5	Tunnels and Subways	474,142.00	2.18	142,992.00
6	Bridges, Trestles, and Culverts	58,462,904.00	1.65	17,398,380.00
13	Fences, Snowsheds, and Signs	3,433,705.00	2.00	1,716,850.00
16	Station and Office Buildings	23,075,079.00	1.77	6,767,509.00
17	Roadway Buildings	1,575,518.00	2.23	517,142.00
18	Water Stations	6,833,375.00	2.15	1,947,242.00
19	Fuel Stations	1,651,649.00	2.50	529,212.00
20	Shops and Enginehouses	12,422,736.00	1.73	3,235,229.00
23	Wharves and Docks	106,378.00	2.48	47,257.00
26	Telegraph and Telephone Lines	4,736,476.00	2.24	1,652,309.00
27	Signals and Interlockers	9,806,614.00	2.89	2,573,610.00
29	Power Plants	759,457.00	1.31	130,491.00
31	Power-Transmission Systems	1,093,235.00	2.10	218,539.00
35	Miscellaneous Structures	1,615,597.00	1.99	380,212.00
37	Roadway Machines	1,475,656.00	5.49	519,157.00
39	Public Improvements-Construction	5,547,747.00	2.07	1,536,545.00
44	Shop Machinery	5,733,849.00	3.10	2,095,370.00
45	Power-Plant Machinery	1,707,368.00	3.01	675,446.00
705	Miscellaneous Physical Property	6,354,225.00	1.78	1,906,268.00
		154,883,145.00		46,464,944.00

* Applicable to gross cost.

It is mutually understood that this is an agreement in principal and that a detailed investigation of the depreciation basis has not been made by the Bureau, and that the basis may be corrected to conform to the allowable basis under the Internal Revenue Code should investigation disclose errors of cost or valuation. In the event of any such correction the accrued depreciation at December 31, 1942, shall be appropriately adjusted, but no retroactive adjustment shall be made to depreciation which may have been allowed subsequent to December 31, 1942.

It is further mutually agreed that the road assets listed below, which have been retired in 1943, or are to be retired in 1944, have not been included in the basis for depreciation, and that retirement losses are to be allowed on the abandonment of these assets. In the determination of these losses, however, the amounts stated shall be reduced by the depreciation sustained prior to March 1, 1913.

**MAJOR ASSETS RETIRED OR TO BE RETIRED IN YEAR
DESIGNATED AND PROVIDED FROM THE DEPRECIATION BASIS**

Account No.	Classification	Year 1943	Year 1944
3	Grading	\$ 2,583.00	\$ 1,435.00
6	Bridges, Trestles, and Culverts	71,201.00	208,698.00
13	Fences, Snowsheds, and Signs	4,863.00	19,756.00
16	Station and Office Buildings	177,505.00	108,398.00
17	Roadway Buildings	4,064.00	4,564.00
18	Water Stations	50,611.00	67,909.00
19	Fuel Stations	23,794.00	66,291.00
20	Shops and Enginehouses	125,340.00	161,853.00
26	Telegraph and Telephone Lines	4,505.00	25,001.00
27	Signals and Interlockers	261,135.00	429,869.00
29	Power Plants	10,238.00	1,508.00
31	Power-Transmission Systems	8,573.00	15,441.00
35	Miscellaneous Structures	1,500.00	1,797.00
39	Public Improvements-Construction	2,739.00	13,996.00
44	Shop Machinery	70,435.00	106,878.00
45	Power-Plant Machinery	8,940.00	14,651.00
		831,026.00	1,248,045.00

Permission to change from retirement to depreciation accounting as of January 1, 1943, will become effective upon receipt of a letter agreeing to all the terms and conditions set forth herein, signed with the corporate name and pen signature of the president, vice-president, or other principal officer, over his official title. It is requested that your acceptance letter be submitted in duplicate.

Very truly yours,
(Signed) HAROLD N. GRAVES
Acting Commissioner

[Filed, Apr. 29, 1969, Court of Claims]

[Defendant's Exhibit 4 DP]

[Dated April 20, 1945]

547 WEST JACKSON BOULEVARD
CHICAGO 6, ILLINOIS

Honorable Joseph D. Nunan, Jr.,
Commissioner of Internal Revenue,
Washington 25, D. C.

Dear Sir:

Referring to your letter, dated September 20, 1944, File ITILV:PU-HSR, granting permission to the Chicago, Burlington & Quincy Railroad Company to change from retirement to depreciation accounting with respect to road and miscellaneous physical property, as therein specified, effective January 1, 1943, under certain specified conditions:

The Chicago, Burlington & Quincy Railroad Company accepts the terms and conditions set forth in said letter of September 20, 1944, upon the understanding and in the event that if any of the terms and conditions stated in said letter should be changed by statutory amendment, by operation of law, or otherwise, the fact that the Chicago, Burlington & Quincy Railroad Company has accepted the terms and conditions set forth in said letter shall not preclude it from the benefits of any such changes in said terms or conditions as are applicable to railroads in general, but the Chicago, Burlington & Quincy Railroad Company shall in any event be entitled to the benefit of any such changes regardless of the acceptance herein contained.

Yours truly,
CHICAGO, BURLINGTON & QUINCY
RAILROAD COMPANY

By Ralph Budd
President.

[Filed, Apr. 29, 1969, Court of Claims]

[Defendant's Exhibit 5 DP]

[Mailed April 12, 1943]

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
547 WEST JACKSON BOULEVARD,
CHICAGO, ILLINOIS.

Attention: Mr. H. W. Johnson,
Vice-President and
Comptroller.

Sirs:

Reference is made to office letter of February 10, 1943 and to your letter of February 5, 1943, applying for permission to change from retirement to depreciation accounting for road property.

It now appears that it will be impossible to arrange a conference, at any time in the near future, for a discussion of the problems involved. Accordingly, there is enclosed a mimeograph which states the terms under which permission will be granted and describes the information that should be furnished.

This information should be prepared and submitted as soon as possible.

Enclosure:
Mimeograph.

Respectfully,
TIMOTHY C. MOONEY,
Deputy Commissioner,

By R. C. STAEBNER
R. C. STAEBNER,
Chief of Section.

[Filed, Apr. 29, 1969, Court of Claims]

[Defendant's Exhibit 6 DP]

[Filed Apr. 29, 1969]

MIMEO 58

CHANGE FROM RETIREMENT TO DEPRECIATION ACCOUNTING
FOR ROAD PROPERTY

In changing from retirement to depreciation accounting, each railroad is required to irrevocably agree:

- (1) That a reserve for accrued depreciation in accordance with one of the options set forth below shall be set up as of the date the change in accounting method is effective.
- (2) That the remaining sum to be recovered through depreciation allowances shall be limited to the cost or other basis less the depreciation so accrued.
- (3) That neither the change of method nor the amount of depreciation so accrued shall have any effect on taxable net income for any year ending prior to the date of change in accounting method.
- (4) That the depreciation rates agreed to are subject to modification if subsequent experience indicates that revision is necessary in order to spread the cost of the assets over their remaining useful lives, such revision however, not to be made retroactive.
- (5) That complete depreciation accounting in accordance with all of the applicable sections of the Internal Revenue Code and Regulations shall be adopted for those accounts which are changed from retirement to depreciation accounting.
- (6) (See page 4)

In connection with condition (1) above, it is necessary to select the option and agree upon the specific reserve for each account to be depreciated before permission is granted.

Each railroad may elect to determine its reserve by one of the following methods:

1. The accounts may be reconstructed from their beginning, or may start with the I. C. C. valuation, setting up as a reserve the difference between cost of reproduction new and cost of reproduction less accrued depreciation as determined at the valuation date. From either starting point the capital accounts shall be carried forward, increased by additions and decreased by retirements, except that any increase in replacement costs or additions or betterments expensed which have been deducted for income tax purposes

may not be restored. Depreciation at rates to be agreed upon shall be computed for all years and accrued into a depreciation reserve. From this reserve shall be deducted the cost of normal retirements, but for retirements due to casualty or special obsolescence, which would have been allowable under depreciation accounting, only the accrued depreciation thereon shall be deducted.

2. A reserve may be set up by multiplying the expired life of individual structures or the weighted average ages of the accounts representing groups of assets now in service by the depreciation rates agreed upon for these assets.

3. A reserve of 30% of the total depreciable road accounts at December 31, 1942, may be set up. It is to be understood that this is an overall reserve and the total amount so computed is to be allocated to the different depreciable accounts on a reasonable basis, such allocation to be a matter of agreement between each railroad and the Bureau.

The basis for depreciation shall be the cost of the existing depreciable property to the present taxpayer, determined in accordance with sections 113 and 114(a) of the Internal Revenue Code. Property acquired prior to the date of valuation by the Interstate Commerce Commission may be set up on the basis of such valuation in lieu of a valuation at March 1, 1913, except that the basis of property not constructed by the present owner but acquired by purchase subsequent to March 1, 1913, may not exceed the actual cost thereof to the present owner. Reorganized railroads entitled to the basis of the predecessor company under section 142(b)(20) of the Revenue Act of 1942 shall determine the predecessor's basis in the same way.

Replacement costs and additions and betterments which have been deducted for income tax purposes in prior years may not be restored to the capital account. Estimated overheads must be excluded, and only actual expenditures reasonably attributable to depreciable property may be included. This rule is applicable to the following expenditures during construction—

- Engineering
- General officers and clerks
- Law
- Stationery and printing
- Other expenditures, general.

The amounts of such expenditures should be shown separately. Interest and taxes may not be included in the depreciation basis.

The basis may include only the investment in property which is actually depreciable. Thus excavations, dredging, expendable small tools, land improvements, land surveys, etc., are not depreciable expenditures, whereas retaining walls, drainage systems, etc., are. Donated property or contributions or grants in aid of construction from any source must be excluded.

Exhibit "A" shows a suggested breakdown of the primary accounts for the purpose of determining depreciation rates and expired lives and reserves. This grouping need not be rigidly followed if other groupings are more convenient. However, a logical breakdown for determining useful lives should be prepared.

In view of the fact that it will be impossible for the Bureau to make a detailed investigation of the depreciation basis, the permission letter includes a mutual understanding that the basis may be corrected to conform to the allowable basis under the Internal Revenue Code should subsequent investigation disclose errors of cost or valuation. In the event of such correction the accrued depreciation would be appropriately adjusted, but no retroactive adjustment will be made for the depreciation which may have been allowed subsequent to the date of the change in accounting method.

Depreciation will ordinarily be computed by primary accounts on the basis of a composite overall depreciation rate determined from a consideration of the principal structural elements and important separate structures within the account. A single reserve will be set up for each primary account, and all normal retirements charged against this reserve. If a taxpayer desires to maintain sub-accounts with separate reserves on the basis of the groupings used in determining the component rates and expired lives from which the primary account rate and starting reserve is computed, it may do so. However, the overall composite rate and depreciation reserve by primary accounts will be controlling for income tax purposes, and this rate will be subject to revision whenever there is a substantial change in the type of structures or equipment included within the account, or subsequent experience indicates a revision is necessary in order to spread the cost of the assets over their remaining useful lives.

The taxpayer should proceed to prepare a statement of the basis for depreciation at the date of changeover, in accordance with the above instructions. The normal useful lives, expired lives and estimated net salvage should be stated for each of the groups within the accounts. Careful consideration should be given to the determination of normal useful lives, which must be reasonable in the light of past experience and future prospects.

In the determination of expired lives or weighted average ages of accounts for the purpose of allocating the 30% reserve under Option 3, above, extreme refinement is unnecessary. Ordinarily the age of 90% of the investment in the account, determined with reasonable accuracy, is sufficient for this purpose. If Option 2 is elected, much greater accuracy in the determination of the age of an account is required.

A schedule by primary accounts broken down into groups along the lines suggested above should be prepared, (see attached "Depreciation Study of Road Accounts"), showing for each group the investment, estimated net salvage, the expired life (or weighted average age), and the taxpayer's estimate of the average normal useful life. These schedules should be submitted in duplicate to the Commissioner of Internal Revenue, marked with the symbols IT: EV:PU. After receipt and consideration by the Bureau the taxpayer will be informed by letter of the position of this office with respect to the useful lives and salvage values claimed and the further steps necessary to the completion of the depreciation schedules, or a conference will be arranged for the discussion of these questions.

If depreciation is claimed on any property under lease, whether as lessor or lessee, and regardless of whether or not the other party to the lease is owned or controlled by the applicant railroad, complete copies of the leases covering such property should be filed.

The following clause has been added to the terms set forth on the first page to which irrevocable agreement is required:

- (6) That the reserve for depreciation accrued to the date of the change from retirement to depreciation accounting shall reduce accumulated earnings and profits in the determination of invested capital for excess profits tax purposes.

TENTATIVE ROAD ASSET GROUPINGS FOR RAILROADS

Account 21—Other R/W Expenditures

Masonry (See Acct. 3)
 Steel (See superstructures, Acct. 6)
 Pipe (See drainage, Acct. 3)
 Paving (See Acct. 16)

Account 3—Grading

Rock-filled timber cribs
 Rip-rap, large stone
 Rip-rap, small stone
 Slag and Cinder Mats

Retaining Walls and Foundations:

Stone Masonry
 Plain Concrete
 Reinforced Concrete
 Brick
 Rubble, In Mortar
 Rubble, Dry

Piling:

Steel
 Concrete
 Treated Timber
 Untreated Timber

Drainage:

Cast Iron Pipe
 Concrete Pipe
 Corrugated Iron Pipe
 Vitrified Clay Pipe
 Wood Box

Account 5—Tunnels and Subways

Tunnel Lining & Portals:

Stone Masonry
 Plain Concrete
 Gunite Concrete
 Reinf. Concrete
 Brick

Treated Timber
 Untreated Timber

Ventilation system

Drainage (See Acct. 3)

Account 6—Bridges, Trestles & Culverts

(Large structures should be segregated)

Substructures (See Retaining Walls Acct. 3)

Superstructures:

Girders
 I-Beams
 Trusses
 Draw Bridges
 Concrete Slabs

Account 6—Continued

Trestles:

Steel
 Concrete
 Treated Timber
 Untreated Timber

Arches (See Retaining Walls, Acct. 3)

Culverts (See Drainage, Acct. 3)

Signs:

Wood
 Metal
 Concrete

Account 7—Elevated Structures

Substructures (See Retaining Walls, Acct. 3)

Superstructures (See Acct. 6)

Account 13—Fences, Snowsheds and Signs

Fences (Separate by kind)

Snowsheds:

Timber
 Other

Signs (See Acct. 6)

Account 16—Station and Office Buildings

(Large buildings should be segregated)

Buildings:

Stone Masonry
 Brick and Concrete
 Terra Cotta
 Large Frame
 Small Frame
 Corrugated Iron
 Steel
 Frame Sheds
 Carbodies

Retaining Walls (See Acct. 3)

Train Sheds (Describe)

Canopies

Platforms:

Concrete
 Asphalt
 Wood

Ice Houses (See Buildings Acct. 16)

Stock Pens

Subways (See Retaining Walls, Acct. 3)

Trestles (See Acct. 6)

Account 16—Continued

Coal Pockets (See Trestles, Acct. 6)

Elevated Tanks (See Acct. 18)

Fuel Tanks:

Underground

On Piers

Pipe Lines (See Acct. 20)

Scales:

Track

Wagon

Platform

Paving and Surfacing:

Concrete

Brick

Asphalt

Wood Block

Macadam

Gravel

Cinders

Cranes and Derricks (State Kind)

Machinery

Furniture and Fixtures

Miscellaneous

Account 17—Roadway Buildings

(See Account 16)

Account 18—Water Stations

Wood Tank:

on Stone or Concrete

on Steel Tower

on Wood Tower

Steel Tank:

on Stone or Concrete

on Steel Tower

on Wood Tower

Water Treating Equipment

Machinery

Buildings (See Acct. 16)

Wells, Dams, and Reservoirs

Water Columns

Pipe Lines (See Acct. 20)

Account 19—Fuel Stations

Trestle Type:

Steel

Concrete

Treated Timber

Untreated Timber

Mechanical Type:

Steel

Concrete

Treated Timber

Untreated Timber

Machinery

Account 19—Continued

Coal Bins, Timber

Coaling Platforms

Fuel Oil Tanks:

Large

Small

Account 20—Shops and Enginehouses

Buildings (See Acct. 16)

Scales (See Acct. 16)

Pits:

Concrete

Brick

Timber

Pipe Lines:

Cast Iron

Wrought Iron

Galvanized

Black

Steel

Turntables

Transfer Tables

Platforms (See Acct. 16)

Mechanical Equipment

Paving (See Acct. 16)

Furniture

Miscellaneous

Account 21—Grain Elevators

Buildings (See Acct. 16)

Mechanical Equipment

Electrical Equipment

Paving (See Acct. 16)

Account 22—Storage Warehouses

Buildings (See Acct. 16)

Machinery

Paving (See Acct. 16)

Account 23—Wharves and Docks

Bulkheads:

Steel

Stone

Concrete

Treated Timber

Untreated Timber

Cribbing, Rock-fill

Piers:

Steel

Stone

Concrete

Treated Timber

Untreated Timber

Docks:

Concrete on Wood Piles

Steel

Account 23—Continued

Docks—Continued

Treated Timber

Untreated Timber

Transfer Bridges:

Steel

Treated Timber

Untreated Timber

Ferry Racks and Slips

Pipe Lines (See Acct. 20)

Beacons

Machinery

Miscellaneous

Account 24—Coal and Ore Wharves

Buildings (See Acct. 16)

Other Items (See Acct. 23)

Account 26—Tel. and Tel. Lines

Pole Lines:

Concrete

Steel

Treated

Butt Treated

Untreated

Wire:

Copper

Iron

Other

Cable:

Aerial

Underground

Submarine

Conduits:

Vitreous Clay in Concrete

Metal or Fibre in Concrete

Wood, Fibre, etc. in Earth

Manholes

Office Equipment

Miscellaneous

Account 27—Signals and Interlockers

Buildings (See Acct. 16)

Interlockers:

Mechanical

Electro-pneumatic

Pneumatic

Electric

Automatic Signals

Centralized Train Control

Automatic Block & Colored Light

Systems

Train Order Signals

Battery Wells and Houses

Account 27—Continued

Signal Bridges

Crossing Gates

Crossing Signals

Annunciators

Car-retarders

Poles (See Acct. 26)

Wire (See Acct. 26)

Ducts

Miscellaneous

Account 29—Power Plants

Buildings (See Acct. 16)

Stacks:

Brick

Steel

Concrete

Coal Trestles (See Trestles Acct. 6)

Pipe Lines (See Acct. 20)

Pits (Kind)

Power Dams and Canals

Miscellaneous

Account 31—Power Transmission systems

Pipe Lines (See Acct. 20)

Pole Lines (See Acct. 26)

Wire (See Acct. 26)

Cable (See Acct. 26)

Conduits (See Acct. 26)

Manholes

Transformers

Third Rail

Towers, Steel

Miscellaneous

Account 36—Miscellaneous Structures

Buildings (See Acct. 16)

Trestles (See Acct. 6)

Flood Lights

Other Items (See Acct. 16)

Account 37—Roadway Machines

Cars:

Hand

Push

Motor

Speeders

Crane

Concrete Mixers

Ditchers

Pile Drivers

Rail Layers

Weed Burners

Sprayers

Auto Inspection Cars

*Account 39—Public Improv's. Const.**Overhead Bridges:**Masonry (See Acct. 3)**Steel (See Acct. 6)**Pipe (See Acct. 20)**Timber (See Acct. 6)**Lighting**Account 39—Continued**Paving (See Acct. 16)**Account 44—Shop Machinery**(To be grouped by assets having similar service lives)**Account 45—Power Plant Machinery**(See Acct. 44)*

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
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ASSET	COST AT DEC. 31, 1942	NET SALVAGE VALUE %	SERVICE VALUE AT DEC. 31, 1942	EXPIRED LIFE YEARS	TOTAL SERVICE LIFE, YEARS	AMOUNT OF ANNUAL DEPRECIATION	DE- PRECIA- TION RATE %	EXPIRED DOLLAR YEARS	PAST DE- PRECIA- TION TO DEC. 31, 1942
<i>Account No. 3—Grading</i>									
Excavation (\$1,000,000)	—	—	—	—	—	—	—	—	—
Retaining Walls, Coursed Masonry	\$100,000	—	\$100,000	36	100	\$1,000.00	1.00	\$ 36,000.00	\$ 23,961.86
Retaining Walls, Dry Rubble	50,000	—	50,000	34	90	555.56	1.11	18,889.04	12,572.68
Road Drainage, C. I. Pipe	90,000	—	90,000	40*	80	1,125.00	1.25	45,000.00	29,952.33
Road Drainage, Vit. Pipe	60,000	—	60,000	25	50	1,200.00	2.00	30,000.00	19,968.32
Piling, Untreated	20,000	—	20,000	20	40	500.00	2.50	10,000.00	6,656.08
Totals—Account No. 3	\$320,000	—	\$320,000	—	—	\$4,380.56	1.37	\$139,889.04	\$ 93,111.17
<i>Account No. 5—Tunnels and Subways</i>									
Excavation (\$500,000)	—	—	—	—	—	—	—	—	—
Tunnel Lining, Stone Masonry	\$ 80,000	—	\$ 80,000	38	100	\$ 800.00	1.00	\$ 30,400.00	\$ 20,234.46
Tunnel Lining, Treated Timber	18,000	—	18,000	22	40	450.00	2.50	9,900.00	6,589.51
Drainage, C. I. Pipe	3,000	—	3,000	36	80	37.50	1.25	1,350.00	898.57
Totals—Account No. 5	\$101,000	—	\$101,000	—	—	\$1,287.50	1.27	\$ 41,650.00	\$ 27,722.54
<i>Account No. 13—Water Stations</i>									
Pump Houses, Brick	\$ 16,000	—	\$ 16,000	36	80	\$ 200.00	1.25	\$ 7,200.00	\$ 4,792.37
Pump Houses, Frame	4,000	—	4,000	22	50	80.00	2.00	1,760.00	1,171.47
Pump Houses, Frame, Adds. & Betts.	1,000	—	1,000	2(a)	30(a)	33.33	3.33	66.67	44.38
Tanks, Wood Tub, Untreated	—	—	—	—	—	—	—	—	—
Frame Tower	8,000	—	8,000	21	30	266.67	3.33	5,600.07	3,727.45
Tanks, Steel Tub, Steel Tower	10,000	2.0	9,800	31	55	178.18	1.78	5,523.58	3,676.53
Stand Pipes	5,000	2.0	4,900	20	35	140.00	2.80	2,800.00	1,963.70

Q. I. Pipe Lines	7,000	—	7,000	20	50	140.00	2.00	2,800.00	1,883.70
Pumping Equipment	12,000	2.0	11,760	22	33½	352.80	2.94	7,761.60	5,166.18
Totals—Account No. 18	\$ 63,000		\$ 62,460			\$ 1,390.98	2.21	\$ 33,511.92	\$ 22,305.78
<i>Telephone Lines</i>									
Pole Lines, Untreated Poles	\$ 15,000	—	\$ 15,000	20	30	\$ 500.00	3.33	\$ 10,000.00	\$ 6,656.07
Aerial Wire, Iron Wire	3,500	—	3,500	30	60	70.00	2.00	2,100.00	1,397.77
Aerial Wire, Copper Wire	9,000	15.0	7,650	30	85	90.00	1.00	2,700.00	1,797.14
Aerial Cable, Insulated	700	10.0	630	18	32	19.69	2.81	354.42	235.90
Underground Conduit, Iron Pipe	100	—	100	28	48	2.08	2.08	58.24	38.77
Underground Cable	500	10.0	450	28	40	11.25	2.25	315.00	209.67
Office Equipment	3,000	1.0	2,970	16	25	118.80	3.96	1,900.80	1,265.19
Totals—Account No. 26	\$ 31,800		\$ 30,300			\$ 811.82	2.55	\$ 17,428.46	\$ 11,600.51
Totals All Accounts	\$515,800		\$513,760			\$7,870.86	1.53	\$232,479.42	\$154,740.00

Legend

- Col. 2 = I.C.C. Cost of Reproduction New plus or minus the net amount of additions, betterments and retirements subsequent to valuation date.
 Col. 3 = Estimated net salvage percent subject to agreement.
 Col. 4 = Col. 2 times 100% minus Col. 3.
 Col. 5 = Computed as shown at the right.
 Col. 6 = Estimated Service Life subject to agreement.
 Col. 7 = Col. 4 ÷ Col. 6.
 Col. 8 = Col. 7 ÷ Col. 2.
 Col. 9 = Col. 7 times Col. 5.
 Col. 10 =

Total of all Accounts, Col. 2 times 30%
 Total of all Accounts, Col. 9
 X Amounts in Col. 9.

*Computation of Expired Life:

Cost	Expired Life	Dollar Years
\$10,000.00	46 Yrs.	\$ 460,000.00
50,000.00	40 Yrs.	2,000,000.00
30,000.00	38 Yrs.	1,140,000.00
\$90,000.00		\$3,600,000.00
	3,600,000.00 ÷ 90,000.00 = 40 Years	

(a) Additions and Betterments

Addition to frame pump house consisted of expenditure for enlargement of existing structure 20 years later and will be retired coincident with original pump house.

NOTE: Used assets acquired should be designated as second-hand (SH) and year of construction shown with item designation. Years owned by taxpayer should be shown in Col. 5 and estimated remaining life in Col. 6.

[Defendant's Exhibit 7 DP]

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

CHICAGO, ILLINOIS

DECEMBER 14, 1959

District Director
Internal Revenue Service
22 West Madison Street
Chicago, Illinois

Dear Sir:

Chicago, Burlington & Quincy Railroad Company hereby irrevocably elects to have Section 94 of the Technical Amendments Act of 1958, also known as the Retirement-Straight Line Adjustment Act of 1958, apply to the determination of its Federal tax liability for all applicable years.

This election is filed in accordance with the requirements of regulation Section 1.9001-1(b)(3).

Yours very truly,
CHICAGO, BURLINGTON & QUINCY
RAILROAD COMPANY
By /s/ [Illegible]
By /s/ Eldon Martin
Vice President

Attest
/s/ [Illegible]
Secretary

[Filed, Apr. 29, 1969, Court of Claims]

[Defendant's Exhibit 8 DP]

[Dated Jul. 26, 1961]

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
547 WEST JACKSON BOULEVARD
CHICAGO 6, ILLINOIS

Attention: Mr. R. C. Smith
Comptroller

Terms Letter Date:
Sept. 20, 1944

Gentlemen:

This refers to your letter of May 1, 1961, relative to the application of Section 94 of the Technical Amendments Act of 1958, submitting revised schedules for your depreciable roadway property.

You were granted permission to change your method of accounting from the retirement to straight-line depreciation method for specified Roadway Accounts in "terms letter" referred to above.

The revised schedules show your depreciable bases, revised depreciation rates based on estimated remaining lives, gross salvage, and revised accrued depreciation reserves as determined in accordance with the provisions of section 94 of the Technical Amendments Act of 1958. Since your unrecovered cost was determined by using gross salvage, dismantling cost applicable to the retirement of depreciable road property is a proper charge to operating expenses.

Based on the information furnished in the letter and schedules referred to in paragraph one above, the depreciation rates, bases, and reserves for depreciation as shown in the attached schedule are acceptable to this office, effective January 1, 1956, provided a timely election has been made under section 94.

It is mutually understood that complete depreciation accounting in accordance with all of the applicable sections of the Internal Revenue Code and Regulations will be followed and, where necessary, proper accounting adjustments shall be made to adjust for the use of betterment accounting in prior and subsequent years.

It is also understood that a detailed investigation of the depreciable basis has not been made by the Service, and that the basis may be corrected to conform to the allowable

basis under the Internal Revenue Code, should investigation disclose any errors. It cannot be determined from these schedules if the adjustments for 3/1/13 depreciation reserve on retirements from 12/31/24 to change-over date are as allowed for these years or are estimated figures. The 1/1/56 adjustment to the reserve should reflect the 3/1/13 reserve on retirements from 12/31/24 to changeover date as allowed in those years for computing taxable income. In the event of any correction the accrued depreciation reserve at December 31, 1955, shall be appropriately adjusted for depreciation sustained before March 1, 1913.

The tabulation shown on Form M-3566, attached, includes remaining "terms letter" property plus net straight line additions added between your change-over date and January 1, 1956. The remaining life rates on Form M-3566 apply only to this property and any minor additions to such property, and may be changed if future experience indicates the need for revision. Property acquired after December 31, 1955, will be depreciated at rates based on estimated average useful lives.

A copy of this letter should be attached to your 1956 amended income tax return or claim for refund, and a copy is enclosed for that purpose.

This letter is not to be construed as an agreement within the meaning of section 167(d) of the Internal Revenue Code of 1954.

Very truly yours,
(signed) Ned W. Arick

*Director,
Special Technical Services Division*

[Filed, Apr. 29, 1969, Court of Claims]

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

ITEM	BASIS AT 1/1/56	RATE % *	ACCRUED DEP.
			RESERVE AT 1/1/56
21. Other right-of-way expenditures	\$ 136,347	2.50	\$ 17,359
3. Grading	10,082,477	2.65	3,210,611
5. Tunnels and subways	475,612	3.67	86,106
6. Bridges, Trestles and culverts	66,987,553	2.66	18,760,348
13. Fences, snowsheds and signs	3,617,251	2.44	1,853,868
16. Station and office buildings	30,956,906	3.99	6,438,078
17. Roadway buildings	1,633,426	3.33	400,510
18. Water stations	2,300,712	4.67	195,927
19. Fuel stations	872,432	3.08	130,378
20. Shops and enginehouses	13,151,091	2.55	3,122,458
21. Grain elevators			
22. Storage warehouses			
23. Wharves and docks	89,683	2.64	32,487
24. Coal and ore wharves			
26. Communication systems	6,383,612	3.47	2,365,670
27. Signals and interlockers	19,283,720	4.03	3,701,557
29. Power plants	634,684	1.75	123,600
31. Power-transmission systems	1,275,700	2.76	258,006
35. Miscellaneous structures	2,067,239	2.93	463,423
37. Roadway machines	4,934,981	7.52	1,496,997
39. Public improvements- construction	6,367,268	3.13	1,626,201
44. Shop machinery	6,363,436	4.43	2,303,480
45. Power-plant machinery	1,834,857	4.21	592,414
737. Miscellaneous physical property *	4,170,767	8.68	965,700

* Remaining Terms Letter property only. Does not include 1943-1955 Additions.

Knight-Direct

TRANSCRIPT OF PROCEEDINGS

[Washington, D.C., March 11, 1969]

* . . *

[70] not serving as agreement.

COMMISSIONER DAVIS: I assume that, on an opening statement. Before you start, I want to ask you something about the issues.

If I remember, from the last trial session we had—is it agreed or is it contested, one or the other, that the railroads took title to the various properties involved? Is that a problem in the case or not?

MR. LANGER: I don't believe it is a problem. I believe the contracts themselves which are in evidence, show where the title lies. I believe the witness today will state that generally the title to overpasses and underpasses was with the railroad, but title to the red lights and such was with the state.

COMMISSIONER DAVIS: But that is all a matter of record in the contracts involved. Is that correct?

MR. LANGER: I believe so.

MR. O'ROURKE: If I may make a statement, Your Honor, I believe that the record will show that the title to the underpasses and overpasses passed to the railroad and the title to the protective facilities which could be either lights, arms or both, also went to the railroads, with the maintenance of the protective facilities to be the responsibility of the [71] railroads.

COMMISSIONER DAVIS: Well, the record will show what it will show, in that regard. I wanted to have that clear in my mind, before you start. You may proceed.

WHEREUPON——

MERRILL D. KNIGHT,

a witness produced on behalf of the Defendant, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

DIRECT EXAMINATION

By MR. LANGER:

Q. Would you please state your full name and address?

Knight-Direct

A. Merrill D. Knight, Jr., 617 Poplar Drive, Falls Church, Virginia.

Q. Are you presently retired?

A. I am.

Q. When did you retire?

A. In April of 1968.

Q. 1968?

A. Yes.

Q. What was your occupation, prior to your retirement?

A. Highway Engineer.

Q. Approximately how long were you engaged in that [72] occupation?

A. I was engaged by the Bureau of Public Roads from 1945 until 1968.

Q. Focusing now back to the period of 1945, did you say?

A. Yes, 1945.

Q. Well, going from 1945 and going forward to 1968, would you please tell us the various positions that you held at the Bureau of Public Roads, and exactly what your duties were, with respect to those positions?

A. In 1945 to 1948, I examined various city plans and the improvement for highways including railway grade crossings.

In 1948 to 1958, I examined the program submitted by the State Highway Department, including projects for construction of various types of highway facilities, including railway-highway projects.

From 1958 to 1961, I was concerned with overall traffic planning and street lay out.

From 1961 to 1968, I was concerned principally with the administration of the Federal Aid Highway Act, with respect to railway-highway crossings.

Q. I believe you mentioned rail-highway projects a few moments ago. Would you please explain what that means? [73] A. Railway-highway project is a project for the construction or protection at rail-highway crossings. In order to facilitate the movement of traffic and for the safety of the public.

Q. Now before we go any further with that, would you please tell us about your professional education and any professional degrees that you have?

Knight-Direct

A. I received my Bachelor of Science Degree from Washington College at Chestertown, Maryland, in 1919, and immediately began work with the Delaware State Highway Department and later the North Carolina Highway Department, and in 1924, with the City of Lynchburg.

From 1925 to 1935, I was Director of Public Works for the City of Lynchburg.

In 1927, I qualified before the State Board of Examiners of North Carolina as a professional engineer. I am presently, and have been registered in the State of Virginia as a professional engineer, since 1938.

During the depression, I worked for the Works Project Administration and later on for the War Production Board, transferring from the War Production Board to the Bureau of Public Roads in 1945.

Q. During the time that you were a Director of Public [74] Roads in Lynchburg, Virginia, did you have any connection—first of all, could you tell us approximately when that was again—the Director of Public Roads of Lynchburg, Virginia.

COMMISSIONER DAVIS: Public Works.

THE WITNESS: Public Works.

By MR. LANGER:

Q. I am sorry. When was that?

A. That was from 1925 to 1935.

Q. During that time, did you have anything to do with railway-highway projects?

A. I did. We had one street widening project that required the widening of an underpass under the Southern Railroad. The Southern Railroad was instructed by the City Council of Lynchburg to reconstruct this underpass, and did so, and my connection with it, with that work, was the review and approval of the plans submitted by the railroad, and the correspondence concerning its financing. That was the extent, as Director of Public Works.

Q. Well, could you tell us whether, in handling those projects that you just mentioned, you had occasion to become familiar with the methods by which the Federal Statutes were administered, with respect to providing funds for these items.

Knight-Direct

MR. O'ROURKE: Excuse me. When you say "these [75] items," you mean the items that the witness has just identified?

MR. LANGER: I am sorry.

MR. O'ROURKE: And does it apply to the Southern Railway Company?

MR. LANGER: In fact, I would rather retract that question and ask it in a different way, if Your Honor please.

THE WITNESS: Federal funds were not involved in the construction of the Southern Railway project. That was done by the railway company.

By MR. LANGER:

Q. Did you have occasion to become familiar with the purposes of railway-highway project construction, at that time?

A. Yes, the purpose of that particular project was to widen the pavement and provide for a greater number of vehicles to pass under.

Q. While you were at the Bureau of Public Roads, did you have occasion to become knowledgeable and familiar with respect to railway-highway projects?

A. Yes, and prior to my connection with the Bureau of Public Roads, while I was with the Works Project Administration, Federal funds were used in the construction of an overpass over the Norfolk and Western Railroad in Lynchburg.

MR. O'ROURKE: If Your Honor please, I will concede [76] that the witness is competent to testify as to the construction and purpose of overpasses and underpasses and protective facilities, if we are endeavoring to qualify him as an engineer with knowledge in that area.

I am not sure of the purpose of the question.

COMMISSIONER DAVIS: I am not either. I think you have got something more than that in mind. Go ahead.

By MR. LANGER:

Q. I would now like to ask the witness if, to his knowledge, the Bureau of Public Roads ever issued any specific official memorandum that dealt with classification of railway-highway projects.

Knight-Direct

A. Yes, they did, in General Administrative Memorandum 325 and 298.

Q. Have you brought copies of those with you?

A. We have copies here, properly certified.

(Memorandum dated August 26, 1948 General Administrative Memorandum 325 was marked for identification Defendant's Exhibit No. 1-DP.)

(General Administrative Memorandum 298, dated March 19, 1946 was marked for identification Defendant's Exhibit No. 2-DP.)

[77]

By MR. LANGER:

Q. Would you please direct your attention to GAM No. 325 which has been described as Defendant's Exhibit No. 1-DP and would you please describe that document for us.

A. This memorandum applies to projects for the elimination of hazards at railway-highway crossings.

Q. Would you please turn to Defendant's Exhibit No. 2-DP which is the other memorandum, and would you please describe that one for us?

A. The other memorandum had the same purpose, but did not provide a classification of projects, and was therefore superseded by 325.

Q. In other words, just for clarification, the document, Defendant's Exhibit No. 2-DP for identification was superseded by Document No. 1?

A. That is right.

Q. Now would you please tell us how this classification was done, first in the earlier memorandum, and then in the second memorandum? In other words, I would ask you first to look at Document No. 2 and then go back to No. 1.

A. Both memoranda were issued to carry out the purposes of the Federal Aid to Highways Act of 1944, which provides that the railroads would contribute an amount equal to the [78] benefits received from the construction, not to exceed ten per cent.

The earlier document set out several features of these projects which would be taken into consideration, in deter-

Knight-Direct

mining the benefits, but due to the fact that these benefits were often intangible and seldom subject to the same interpretation by the various parties, the later document classified the railroads according to their elements such as grade crossing elimination, the reconstruction of existing highways and railroad separation, and the installation of protective devices.

It sets forth in detail which one of these classes would be considered of cognizable benefits and which ones would not. Those that were considered of cognizable benefit, would call for a contribution of ten per cent of the costs from the railroads. Those that were not would be constructed without any cost to the railroad whatsoever.

Q. Now you mentioned that the statute required the railroads to pay up to ten per cent of the benefits.

A. That is right.

Q. Could you explain what you mean by that, up to ten per cent of what benefits?

A. Well, we had cases where the railroads felt their [79] benefits would not exceed one or two per cent, and the State Highway Department may have thought that they were more, but under the law, they could not be charged more than ten per cent.

Q. In other words, you say "benefits." You mean the benefit to the railroad?

A. Yes, the railroad.

Q. Could you briefly tell us what the contention of the railroad was, in such situations, where problems arose?

A. Well, many of these grade crossings we were seeking to eliminate had been in existence for years, and the railroads felt like it was the increase in vehicular traffic that necessitated the construction. The railroad traffic generally was on the decline, and they therefore objected to any large assessment of the cost.

Q. Now do you know why there was any problem in determining the amount of the benefit?

MR. O'ROURKE: By that, you mean benefit to the railroad?

By MR. LANGER:

Q. Yes.

Knight-Direct

A. Benefit to the railroad? Well, to repeat, these benefits are often intangible. The probable accident reduction was one item, and that was rather difficult to de- [80] termine mathematically what that reduction would be.

The operation and maintenance of the crossing itself was a small item in most cases. In other cases, it might be considerable. The train operation—I couldn't tell you how that was affected, whether the trains had to slow down or not. That would be a matter of local legislation, I assume.

Q. These problems that you have referred to, were they problems that only arose in specific instances, or were they general things that affected railroads in general?

A. They were general enough to result in considerable delay, in many, many cases of constructing worthwhile projects.

Q. I know this is going to be slightly repetitious. Could you now tell us how the second memorandum that you referred to solved some of these problems?

A. The second memorandum, issued by the Bureau of Public Roads was—

Q. Which number is that now?

A. That is 325.

Q. GAM 325?

A. Yes—was the result of extensive conferences and discussions between the Association of State Highway Officials and the Association of American Railroads, and the two organ- [81] izations were the Bureau of Public Roads agreed that, under special circumstances, the railroads would pay the full ten per cent and, in other circumstances, they would pay nothing. There was no graduated scale there.

COMMISSIONER DAVIS: Who made that decision, Mr. Knight?

THE WITNESS: That decision was made by the Bureau of Public Roads, after consultation with the American Association of State Highway Officials and the Association of American Railroads.

By MR. LANGER:

Q. Could you tell us whether this memorandum was made known to the railroads of the United States generally?

Knight-Direct

A. Yes, it was distributed to all concerned, because one of the requirements is that, before Federal funds could participate, the State Highway Department would have to reach an agreement with the railroad to conform to the requirements of this memorandum.

Q. Well, what would happen if they couldn't reach such an agreement?

A. Well generally, the State Highway Department had recourse to some state public utilities commission or state corporation commission that would issue a mandate on the sub- [82] ject.

Q. Would you describe briefly now the various types—I assume there is more than one type of railway-highway project—and I would like you to describe the various types that there are.

A. Well, we have the installation of warning devices, lights and gates, or both, and we have the elimination of grade crossings through construction of an overpass or an underpass or the relocation of a highway or the relocation of a railroad. There are also grade separation structures, built where no previous crossing existed, and in those cases, the railroad paid nothing.

Q. Now could you please tell us what the railway-highway projects accomplished when they were put in, or what did they accomplish?

A. The warning devices protected the traveling public by giving a warning of an approaching train. The overpass and underpass structures eliminated the possibility of conflict between the vehicular traffic and the railroad traffic.

Q. Could you tell us whether it ever occurred that a grade crossing which first has a protective device should have a railway-highway project associated with it, so as to remove the protective device and install an overpass or [83] an underpass instead?

A. Yes, if due to the delay in traffic or a high accident rate at a particular crossing, it was found justified, we participated in the building of overpasses and underpasses. The signals being removed became the property of the State Highway Department to be installed at some other location.

Q. Would you know if there is any expense involved in maintaining a protective device, such as a signal?

Knight-Direct

A

mon. Yes, I think that is general knowledge that it costs money to maintain any electrical equipment.

is s. And of course when a highway overpass or underpass is substituted for a protective device, then the maintenance expense on the protective device is also eliminated.

A. I don't understand.

dev. I would assume that, if you took out the protective device and substituted an overpass or underpass, you are saving money on maintaining the protective device.

A. That would be one benefit to the railroad.

loc. Now could you please explain, in some detail, how a facility would go about—if it wanted to have either a protective device or an overpass or an underpass installed at a certain grade crossing—what would be the negotiations [84] or what would happen, if anything? How would they go about that?

un. A. They could appeal to the regulatory body of the state, in order state status, or if they wanted Federal participation me the cost, they would request the State Highway Department to make an application and submit a program to the Bureau of Public Roads for an allocation of funds for that purpose.

cr. Q. Who was to ultimately decide whether a specific grade crossing should be eliminated, by way of a highway project?

th. A. Well, the Bureau of Public Roads has final approval.

a. Q. Would you know whether generally it was the railroad that went to the locality and asked for a grade separation or protective device, or whether it was the locality that went to the railroad first, to ask for a separation or protective device?

Mr. O'ROURKE: Is your question: Would he know?

Mr. LANGER: Yes. Do you know, is my question.

By Mr. LANGER:

ot. Q. Do you know whether generally one party went to the other, or generally the other party went to one?

a. A. I only know through correspondence which passed over [85] my desk, where the locality was attempting to get the project for the elimination of hazards.

Q. You say it passed over your desk? Do you mean: in the course of your official duties?

Knight-Direct

A. Yes.

Q. In those situations that you are familiar with, it was the locality that was requesting it?

A. Yes.

Q. I think you began your discussion of these two documents that you have before you, by mentioning the 1944 statute, and I would like to ask you whether there were any previous statutes dealing with Federal funds, and if there were, would you tell us about them?

A. The Federal Aid to Highways Act, originally passed in 1916 and amended in 1921—it was expanded and included highway improvements, and there was no specific mention in that act of the railway-highway project, but they were eligible, as a highway project, under the regular pro rata. During the depression, the Emergency Relief Act of 1935 made Federal funds available for elimination of hazards at railroad crossings, with 100 per cent Federal funds, and there were other highway acts from then on up, including provision for protection at railway-highway crossings.

[86] Q. Now this 1935 Act that you mentioned—would you know what the purpose of the highway project that it dealt with—what was the purpose?

A. The purpose of that Act was to provide employment for unemployed persons, and to construct worthwhile projects for the community.

Q. By "worthwhile" do you mean also safety projects?

A. Yes. That would include all types of projects.

Q. Would you know whether the purpose of the 1935 statute and the 1944 statute, that you mentioned—whether that purpose was to provide funds that would increase the working capital of the railroad?

A. No, I couldn't answer that.

MR. O'ROURKE: Would you repeat the question and answer?

(Record read)

MR. LANGER: At this time, I would like to offer Defendant's Exhibits Nos. 1-DP and 2-DP for identification, and they are accompanied by a certification of the Records Management Branch of the Bureau of Public Roads and the Department of Transportation.

Knight-Direct

COMMISSIONER DAVIS: Mr. O'Rourke, do you have any objection?

[87] MR. O'ROURKE: I don't think I have any objection, Your Honor.

COMMISSIONER DAVIS: They will be admitted.

(Documents heretofore marked for identification
Defendant's Exhibits No. 1-DP and No. 2-DP
were received in evidence.)

COMMISSIONER DAVIS: Do you know where these marks came from on here, on page 3 of 1-DP. It has some writing on the margin. Do you know anything about that? Maybe the witness does.

By MR. LANGER:

Q. Mr. Knight, can you tell us what that writing is on the margin?

MR. O'ROURKE: There is no writing on mine.

MR. LANGER: My copy didn't have writing on it.

THE WITNESS: Evidently before this was run through the Xerox or reproduced, someone made a comment about the current regulations which now apply to this item.

By MR. LANGER:

Q. Do you know what year the current regulation came into effect?

A. 1958.

COMMISSIONER DAVIS: Well, I assume we can disregard [88] any of that.

MR. LANGER: So far as I am concerned, it is after the years involved anyway.

(Discussion off the record.)

By MR. LANGER:

Q. Mr. Knight, I just have a few additional questions. First of all, you mentioned that the statute provided that up to ten per cent would be paid by the railroad in the amount of its benefit, but not more than ten per cent. Am I to understand that the railroads which contested the amount would have the benefit that was allocated to them,

Knight-Direct

that they were claiming that they were receiving even less than ten per cent benefit from the project?

A. That is correct.

Q. Would you please describe to us how the Federal funds were allocated across the country, among different projects or among different localities, if you know.

A. The Federal Aid Highway funds made available under the 1944 Act, and subsequent Acts, are distributed by formula, based on population, road mileage, and area.

The 1944 Act, in providing an increased percentage of participation by the Federal Government, for railway-highway projects, limited the amount of such funds to ten per cent of [89] the total apportionment to the state.

In other words, on ordinary highway project, the Federal Government would pay fifty per cent and the State would pay fifty per cent. If it included the elimination of hazards at a railway-highway crossing, the State is permitted to use up to ten per cent of their total allocation for such projects, in which the Federal Government will pay ninety per cent or one hundred per cent, depending on what the railway contribution was.

Q. In order to make it clear, could we start again? As I understand it, fifty per cent would be paid by the state, and who would pay the other fifty per cent?

A. The Federal Government, on an ordinary Federal Aid highway project, to the railroad involved.

Q. Where does the ten per cent factor come in, that you just mentioned?

A. Well, ten per cent of the total funds apportioned to a state may be used at the increased ratio.

Q. I see. In other words, a total amount could be apportioned to a specific state and that state would take ten per cent of that total amount and use it on one specific project?

A. Yes, they could use it on a number of projects, involving railway-highway grade crossings.

[90] Q. Now tell us, under what conditions could they use that money, that ten per cent?

A. Well, the condition was for the elimination of hazards.

Q. Were there any other conditions?

A. And the fact that the Federal Government would pay more than the normal fifty per cent.

Knight-Direct

Q. You mentioned that the 1944 statute allocated funds among the states, on the basis, I believe, of three factors. Could you please state those three factors again?

A. Area, road mileage and population.

Q. By "area" you mean area of the state?

A. Yes.

Q. Was the profit and loss status of the railroad itself considered in allocating funds?

A. These funds were not allocated to the railroad. They are allocated to the State Highway Department for all highway projects.

Q. Now my question is: In allocating the funds, did those who allocated the funds take into consideration the fact that a certain railroad located there was either a profitable railroad or a losing railroad.

A. No, the railroads were not considered in the [91] allocation of funds.

Q. They were not considered at all?

A. No.

Q. In other words, just to tie this up, were the capital needs of a railroad, the need for capital funds—was that considered in allocating these funds?

MR. O'ROURKE: I believe the witness already answered the question. I will object to it.

COMMISSIONER DAVIS: I think he has. You are zeroing in a little more specifically. I will let him answer the question.

(Question read)

THE WITNESS: No.

MR. LANGER: I have no further questions of this witness at this time.

CROSS-EXAMINATION

By MR. O'ROURKE:

Q. Mr. Knight, am I correct that the purpose of providing to states Federal funds which the state could use, together with its own funds, for the construction of overpasses, underpasses, and railroad protective facilities, was to facilitate the movement of motor vehicular traffic. Is that right, sir?

[92] A. The safe movement.

Knight-Cross

Q. The safe movement? Right, sir, and according to—am I correct, sir, that the general purpose of allocating Federal funds to the state for expenditure by the state, in the connection we are now speaking of, was to provide for the safety of the general public?

A. That is correct.

Q. Am I correct further that one of the problems in determining whether there was any benefit to a railroad, was in determining whether their operations were, in any way, reduced as to effort or expenditure of sums of money? If you don't understand my question, just say so and I will rephrase it.

A. I wish you would.

Q. Strike it.

You indicated that there was difficulty in determining whether there was any benefit to the railroad, derived from the construction of overpasses, underpasses, and protective facilities. Is that right, sir?

A. The difficulty was in determining the amount of benefits, if any.

Q. And that benefit would be derived, am I correct, from saying that it would be an operational benefit, that is, a [93] betterment in your operating procedure, by the railroad. Is that correct, sir?

A. The operational benefit was one of the factors that they attempted to consider.

Q. Attempted to consider?

A. That is right.

Q. And you ultimately found it so difficult that it was decided that it could be no more than ten per cent—the liability could be no more than ten per cent of the total cost of the construction?

A. That is not exactly right. The statute of 1945 limited it to ten per cent.

Q. Just for clarification, Mr. Knight, did you participate and, if so, to what extent, in the promulgation or issuance of Defendant's Exhibits Nos. 1 and 2-DP?

A. No, I did not participate in the preparation of that.

Q. Am I right, sir, that these are memoranda issued by the Public Roads Administration and available to the public generally?

Knight-Cross

A. That is right.

Q. They were intended as guidance memoranda for the administration of the Federal Aid to Highways Act of 1944. Is that right?

[94] A. That is correct.

Q. Am I correct further, sir, that the Federal Government, as you have described it, would make available to the state certain sums to be expended by the state in highway construction. Is that right?

A. That is right, yes.

Q. And those funds became the funds of that state, for that stated purpose?

A. That is right.

Q. Is that right, sir?

A. Yes.

Q. And accordingly, as to any railroad overpasses, underpasses, or protective facilities, the expenditure for the cost of that construction, to the extent not borne by the railroad, would be borne by the State, out of the funds made available to them, under the Highway Act?

A. That is correct.

Q. And therefore it would not be the Federal Government that would be paying the cost of construction of that overpass, underpass, or protective facility. It would be the state, to the extent that the railroad did not pay the cost of that construction.

A. I will try to answer your question.

[95] Q. All right, sir.

A. The state had this amount of Federal money available. If they did not use it on railway-highway projects, they could use it on other highway projects, but they did not get the money until they had used it on a highway project, approved by the Bureau of Public Roads.

Q. This may be an accounting detail, but did the State have to first spend the sums and then they were reimbursed?

A. They are reimbursed, after the project is completed.

Q. Assuming that it was a 90 per cent overpass—if you will assume that for me, a railroad overpass—the state would pay the 90 per cent and the railroad would pay the ten per cent, and then the state would apply to the Federal

Knight-Cross

Government for reimbursement of its 90 per cent. Is that right?

A. That is correct.

Q. But the initial payment was made out of State funds, by the state?

A. That is correct.

Q. Now if you know—and you may not know, and it isn't always necessary for the witness to know everything—assume an overpass, a railroad motor vehicular overpass, separation of highway and the railroad right of way; upon the completion of that project, and payment having been made therefore, by the [96] state, and assume the railroad having paid ten per cent, that piece of construction, if I am correct, became the property of the railroad. Is that right, sir?

A. I do not believe so.

Q. I am interested in that. You said earlier that, on protected facilities that were abandoned in favor of a different type of construction, that is to say, an overpass or underpass, the property, that is the protective facilities, became the property of the state. Was that your testimony?

A. Yes, sir.

Q. Can you tell me the source of that statement and let me rephrase that. I am giving you a double question in a way, but we will work it out.

Did the arrangement between the railroad and the state, as to who was the owner of the property depend upon whatever agreement was reached between the state and the railroad?

A. Are you talking about signals now, or structures?

Q. Let's talk about signals.

A. Talking about signals?

Q. Yes, sir.

A. I don't know whether this is admissible.

Q. I asked the question, so you can answer it, sir.

[97] A. I personally saw a decision handed down by a solicitor some years ago, in which he said the maintenance of the signals by the railroad did not give the railroads title.

Q. Can you tell me when that decision was handed down, and this solicitor was employed by whom, sir?

A. The Bureau of Public Roads.

Knight-Cross

Q. Federal?

A. Yes.

Q. Now can you tell me to whom he rendered that opinion—and it was an opinion?

A. It was an opinion. He delivered it to the Commissioner.

Q. Of the Bureau of Public Roads?

A. Yes.

Q. Are you familiar with the fact—if you will accept it to be a fact, as shown by this report—that agreements were entered into, with respect to, we will say, the erection or construction of protected facilities between the State involved, in which the railroad was operating, and the railroad? Are you familiar with any of those agreements?

A. I have seen quite a number. They all did not pass over my desk, during that period, but I did see quite a number.

Q. But you are familiar with the fact that the construction of an overpass, underpass or protective facility was pursuant to an agreement between the railroad and the state?

A. The agreements are required by the memoranda which have been submitted in evidence.

Q. They were between the railroad and the state?

A. And the state, that is right.

Q. And the Federal Government was not signatory, or did not participate in the execution of those agreements?

A. No.

Q. Your answer is no, sir?

A. The approval of the Bureau to the agreement is required before construction is undertaken.

Q. And that approval, sir, goes to the engineering aspects?

A. Yes, it includes the granting of an easement; if one is granted to the state, it sets forth who is to maintain it, the conditions surrounding the construction, such as furnishing a flag man, the reimbursement of the railroad for their expenses and so forth.

Q. So that the state would be in a position to know in what amount it might be reimbursed, out of those Federal funds.

A. Absolutely.

Knight-Cross

[99] Q. As I understand it, just for clarification, if the state was extending funds for highway construction, which did not include a railroad underpass, overpass, or any railroad protective facility, the expense of that construction was borne on a 50-50 per cent between the Federal Government and the State Government. Was that what your testimony was?

A. Generally the public lands state gets a higher percentage, receives a higher percentage, and of course the interstate highway system is much higher.

Q. Now assuming that that highway construction included the construction of a railroad overpass, then am I correct that you testified that the State could use up to ten per cent of its total allocation of available Federal funds for the construction of such types of construction that is, overpasses, underpasses or protective facilities?

A. No, the use of ten per cent for a project financed at greater than the normal pro rata—

Q. The project financed at greater than normal pro rata which for this purpose, we will say, is 50-50?

A. It is.

Q. And where they are financed on a 90 per cent, that is 10 per cent to the railroad, 90 per cent to the state, then in those instances, you are limited—the state is limited [100] to ten per cent?

MR. LANGER: Excuse me. Did Mr. O'Rourke say 90 per cent to the state and 10 per cent to the railroad?

MR. O'ROURKE: 90 per cent to the state and 10 per cent to the railroad. Strike that question and I will ask it again.

MR. LANGER: Before the question is asked, am I to understand—

MR. O'ROURKE: Let me take the witness on cross and you can take him on redirect, and we will see if we can get these numbers straightened out.

By MR. O'ROURKE:

Q. You understand what I am trying to do. You testified earlier about a 50-50 and then you testified about 10 per cent of the total, and I am trying to get straight for the record what we are talking about.

Wheeler-Direct

I understand you to say that, with the normal pro rata, which we will say is 50-50, as between the State and Federal funds, is not applicable and as in the case of a highway overpass, where the pro rata was, we will say, ten per cent to the railroad and 90 per cent to the State, that the State would be limited to using not more than ten per cent of the Federal funds allocated to that State, if they wished [101] reimbursement out of Federal funds.

A. Yes.

Q. Is that correct, sir?

A. Yes.

. . . .

TRANSCRIPT OF PROCEEDINGS

[Chicago, Illinois (Crown Point, Indiana),
January 15, 1968]

THE COMMISSIONER: Let the record show that we have reconvened at Crown Point, Indiana, at the residence of Col. John Wheeler.

Mr. Schreiber, you may proceed.

COL. JOHN W. WHEELER,

a witness produced on behalf of the plaintiff, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories, testified as follows:

DIRECT EXAMINATION

By MR. SCHREIBER:

Q. Would you please state your name and address?

A. John W. Wheeler, Box 236, Crown Point, Indiana.

Q. Are you presently retired, Col. Wheeler?

A. I am.

Q. How long have you been retired?

A. Oh, I have been completely retired for about eight years, seven or eight.

Q. By whom were you employed immediately prior to your retirement?

A. C. B. & Q. Railroad, Chicago.

. . . .

Wheeler-Direct

[20] Q. And you were in service at that time, is that correct?

A. Yes.

Q. Getting back to the time when you were with the Indiana State Highway Commission—

A. Yes?

Q. —what was your understanding of this Federal Aid Highway program that was enacted in 1933 that you referred to previously?

A. We didn't understand much of anything. We knew that President Roosevelt, upon sizing up the situation, wanted to put men to work, and highways was one of the avenues that suggested itself, and because someone told him that there was more hand labor in bridge work than there was in just state highway work, apparently they got into the grade separation program.

Q. Actually how was the program implemented in Indiana when you were a member of the Commission with railroad separation projects and/or signal projects?

A. Well, they were both the same. We won't go into the signal work because there are so many of them and they are such small change.

Q. You mean it is the same principle you apply?

A. It is the same thing, and it is so small. [21] I didn't handle those. Mr. Essman, in my day, handled them.

Q. Mr. Essman is employed by the Chicago, Burlington & Quincy Railroad Company?

A. That is right. Signal engineer is his title, I think.

Q. But isn't it a fact that you did negotiate some of these signal agreements that later were implemented by Mr. Essman and his people?

A. Yes, I think—I would get out here some place and they would say, "How about a signal here?"

And I would say, "Fine." And I reported back and he would handle it.

Q. Getting back to the time you were with the Indiana State Highway Commission, would you describe your experience there in regard to negotiating with railroads?

A. Yes, as soon as this act was passed the Public Roads Administration, known as the Bureau of Public Roads then, informed us what would be money available, set up for each

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state on the basis of ratio of miles of area road to the railroad mileage in that state, that the money would be parceled out in that ratio. For instance, in Indiana, it happened to be [22] that the New York Central was the high mileage railroad, and then on down. We would notify, for instance, the New York Central that we had so many hundred thousand dollars which could be used for grade crossing elimination on their railroad and we would like to recommend crossings A, B, and C, would their representative, at his early convenience, come to our office and tell us how he felt on our choice, and perhaps we could alter it somewhat to his choice.

Q. Now, what factors did you consider in making the original selection of proposed separation facilities?

A. Well, we knew what was in the mind of the Public Roads Administrators. Number one was put men to work. The second was to speed up highway travel. We knew that. They told us that.

Q. Speed up highway travel?

A. Yes, so they wouldn't have to wait for long freight trains. They would like to separate the grade for safety and so they would not have to wait for long trains, so knowing that was in their mind—you see, they finally had to pass, no matter what New York Central and Indiana did, that advance had to be approved by the Bureau of Public Roads.

* * *

[34] Q. Did the Burlington return any services to the state or municipal body in connection with these projects?

A. We rendered service but they paid for it. For instance, if it was a dangerous situation we would put a watchman on. We kept track of the watchman's time and billed them and they paid it.

Q. Now, did the Chicago, Burlington & Quincy Railroad Company garner any benefits from any of these projects?

A. Well, there are many intangibles. I imagine we received a lot of good will from people who had been held up by freight trains and now were not held up.

Q. Actually, aren't they the persons or individuals that received the benefits by the fact that they no longer had to wait for a freight train?

A. Oh, yes. They were——

Q. Excuse me, go ahead.

Wheeler-Direct

A. No, that is it.

Q. The Burlington Railroad wasn't able to run the trains faster or anything?

A. Oh, yes. For instance, when we were going through Brookfield at the grade we didn't just highball through it. And when we got separation there we went [35] faster on those trains that didn't have to stop. That was by our own volition. It wasn't by ordinance or anything.

Q. Some of these municipalities have a speed ordinance in their city limits, do they not?

A. Any of them can put them there if they want it.

Q. Did the Burlington Railroad return any services such as stopping passenger trains where no passenger trains stopped before, in connection with these projects?

A. No.

MR. SCHREIBER: I believe that is all I have.

THE COMMISSIONER: Do you want to confer?

MR. SCHREIBER: I want to confer just a minute, if I may, sir?

By MR. SCHREIBER:

Q. Now, Col. Wheeler, would you define what you mean by bridge separation?

A. Bridge separation?

Q. Yes, overpass?

A. Oh, it is an overpass if the highway goes [36] over the railroad. It is an underpass if the railroad goes under the highway.

Q. And would you define what is meant by the term "grade separation?"

A. A grade separation is where the railroad and the highway cross at the same elevation on the ground.

THE COMMISSIONER: I don't understand that, Colonel. You say they cross at the same—

THE WITNESS: Well, the same elevation or a slight change, but it is on the ground. I don't know how to say it any better. If the ground is flat they cross it exactly flat.

THE COMMISSIONER: What does the word "separation" then mean?

Wheeler-Direct

THE WITNESS: Well, that separates the railroad and highway.

By MR. SCHREIBER:

Q. And what do you sometimes find at such a location—signal protection?

A. Well, there are many signals. A job that [37] isn't considered to be worthy of a large expenditure gets an electric flasher, and that is a signal.

Q. But the term grade separation, does that mean that the grade of the railroad where it crosses the highway or road of some sort, is that just a railroad term to distinguish a ground level crossing on a railroad?

A. No, that is accepted by everybody. Now a grade crossing did you say?

Q. Grade crossing and/or—well, that is a grade crossing, is that correct?

A. That is a grade crossing.

Q. Now, would you distinguish, if there is any distinction, between that and the grade separation?

A. Oh, yes. The grade separation, one—either the highway or the railroad—crosses several feet above or below the other.

Q. That is what you referred to before as either an overpass or an underpass or a subway?

A. That is right.

Q. Now, I hand you a document. For purposes of identification this is a copy of Joint Exhibit [38] 5 which was attached to the stipulation.

Do you have a copy?

THE COMMISSIONER: Yes, we both have a copy.

By MR. SCHREIBER:

Q. Are you familiar with that document?

A. Oh, yes.

Q. Have you looked over that document as to each particular project?

A. Yes.

Q. Now, does your testimony that you have given today apply to each one of those particular projects?

A. No, sir, it does not, but if you will note the date on

Wheeler-Direct

them, some of them were negotiated and built before I came to the Burlington.

Q. That is correct, but you have had an opportunity to look at some representative agreements on that Joint Exhibit 5 which you did not personally negotiate, is that right?

A. That is right.

Q. Were they along the same line as the agreements you negotiated?

[39] A. No. You see before, there was a period before the Federal Highway Act was passed that they were negotiated between the railroad and state public service commission which adjudicated the division of cost as they saw fit.

THE COMMISSIONER: Division of cost—go ahead.

By MR. SCHREIBER:

Q. The division of cost of a particular project, is that correct, instead of one hundred per cent payment by the state that might be fifty-fifty or twenty-five-seventy-five, is that correct?

A. Oh, yes.

Q. But whatever percentage—excuse me.

A. Yes, sir, you are correct. They generally finished up by the State Commerce Commission causing the railroad to pay a little more than half of it.

Q. But over that there still remained a certain percentage which was paid by the state or municipality, is that correct?

A. Well, the state had to pay or the municipality, the county, I don't know. I don't know who. Say that was the Illinois Commerce [40] Commission. Who brought this up? Who wanted this separation? We will say Winnebago County. They decided that the Burlington Railroad should pay so much and Winnebago County had to pay so much.

Q. But the County did pay some percentage, whatever it might be?

A. Oh, yes.

Q. And it would be no different from the projects you negotiated except from the division of cost percentage-wise?

A. That is right.

THE COMMISSIONER: You say it was no different, would you clarify the previous answer?

Wheeler-Direct

You say it was no different. Is this from your review of contracts which were made prior to the time you were in the position in which you previously testified?

You can expand on that, Mr. Schreiber.

MR. SCHREIBER: Yes. If the Colonel——

THE WITNESS: Well, now, you will have to clarify your question.

[41]

By MR. SCHREIBER:

Q. May I ask a question, maybe that will clarify it?

A. Yes, sir.

Q. Now, when you became employed by the Burlington Railroad there were contracts that had been negotiated prior to the time you permitted employment by the Burlington, is that correct?

A. That is right.

Q. Did you have opportunity to review those contracts?

A. Oh, yes.

Q. Now you have testified that prior to this Federal Aid Highway Act various states would enact orders by the state commissions requiring the Burlington Railroad to, perhaps, install a crossing protection at a particular location?

A. Yes.

Q. That was done on petition to the commission by various residents of that area, is that correct?

A. Yes.

Q. Then the commission would enter an order?

[42] A. That is right.

Q. Setting up a division of cost?

A. That is right.

Q. If the Burlington Railroad had completed the same project subsequent to the time of the Federal Aid Highway Act they could have received the entire amount from the federal government or the state government for the same project, is that correct? Assuming it was approved by the state highway commission?

A. After the Federal Highway Act of 1933 was passed the railroad had to pay nothing.

Q. Now, as it was before then the railroad had to pay some?

Wheeler-Direct

A. Yes.

Q. The state still paid something, is that correct?

A. Oh, yes.

Q. There were no factual differences between the particular projects?

A. No, if I understand your use of the word "factual"

THE COMMISSIONER: Well, explain [43] what you mean by that and then clarify between the two of you.

MR. SCHREIBER: O.K.

By MR. SCHREIBER:

Q. Well, Colonel, if at a point, say in Winnebago County, Illinois, there was a crossing of railroad and highway—

A. Yes.

Q. —and it was desired to install signals, crossing protection—flasher lights and gates?

A. Yes; not gates—well, full gates had been invented. The half-arm gate came later. Go ahead.

Q. Let's just take it with flasher lights.

A. Go ahead.

Q. The fact is an installation of flasher lights is desired to be installed at this particular crossing in Winnebago County, now prior to the passage of the Federal Aid Highway Act that you referred to previously, then somebody went to the state commission to get an order to install a flasher light at that point—it is the same flasher light we talked about subsequent to passage [44] of the act—

A. That is right.

Q. —but prior to passage of the act the commission would enter an order proportioning the cost on some basis?

A. That is correct.

Q. And the Burlington would pay whatever the commission ordered?

A. Well, I don't remember how you appeal on that. I don't think the railroads appeal from it much. By the time I got to the Burlington we didn't have to contend with the federal highway in Indiana. Of course, I had nothing to do with it there either. It was a matter between the railroad and the Public Service Commission in Indiana.

Q. Getting back to when you first became employed by

Wheeler-Direct

the Burlington you did review contracts that had been entered into between the Burlington and various state bodies prior to the time you were employed, did you not?

A. Oh, yes.

Q. And some of these pre-dated the passage [45] of the Federal Aid Highway Act, wouldn't they?

A. Oh, yes.

Q. Was the terminology used in the particular agreement the same as that used in the agreements you negotiated except for the additional cost?

A. Now, you will have to clarify that question—terminology.

Q. Let's take an example.

THE COMMISSIONER: Let me ask this: Were the basic provisions of contracts essentially the same except for the division of payment existing between the federal government after 1933 and the states or municipalities prior to 1933 with respect to those like installations of flasher signals?

Does my question make sense to you?

Would you read it?

(The question was read by the court reporter.)

THE WITNESS: Well, you must understand there were fifty state service commissions. For instance, in Texas it [46] was the Railroad Commission. In Illinois it was the Illinois Commerce. In Indiana it was the Public Service Commission. There was fifty of them, and how they worded those I suppose there were fifty different ideas.

THE COMMISSIONER: I appreciate that would be true, but generally speaking the provisions did not change after 1933 to what they had been previous to 1933, is that correct?

MR. SCHREIBER: May I give the witness those exhibits?

THE COMMISSIONER: Yes, you may.

By MR. SCHREIBER:

Q. I hand you Plaintiff's Exhibit 10 and Plaintiff's Exhibit 13 and I ask you to examine those documents.

THE COMMISSIONER: What is the date on that?

THE WITNESS: '24, 1924. I would have no idea.

Wheeler-Direct

By MR. SCHREIBER:

Q. Have you examined the document Plaintiff's [47] Exhibit 10, have you looked it over?

A. Well, now, I can't see how long—I can't say that I have read it enough to discuss it intelligently because of the date.

Q. Yes, but does it provide for a subway, is that the intent of the agreement?

A. That it does, for a subway division of cost of subway; half, the Department of Public Works and Buildings and one half to the Chicago, Burlington.

Q. I ask you to look at Plaintiff's Exhibit 13 if you would like to look at the date in question. Do you see the date of that agreement?

A. Yes.

Q. What is that date?

A. 1953. All right, now, what is your question on that?

Q. I have asked you to examine that document and see what it provides.

A. This provides for gates.

Q. That is installation for crossing protection?

A. That is right, single-arm gates and [48] combination of flasher light signals.

Q. Well, let me hand you Plaintiff's Exhibit 9. You can see on the front page of the document that it is dated February—

A. '35.

Q. 1935. What does that agreement provide for?

A. It asks for a separation.

Q. Now, handing you again Plaintiff's Exhibit 10 to be read along with Plaintiff's Exhibit 9. Do both Plaintiff's Exhibits 9 and 10 provide for the same type of facility, that is a subway?

A. Well, this one calls for a subway.

Q. You are referring to Plaintiff's Exhibit 10?

A. Yes.

Q. Does Plaintiff's Exhibit 9 also provide for a subway?

A. That is right, both of them.

Q. Now, the one you testified to previously, Plaintiff's Exhibit 10, provided for a division of cost, fifty per cent to the state and fifty per cent to the railroad, is that correct?

Wheeler-Direct

[49] A. That is correct.

Q. Now, I ask you to look at Plaintiff's Exhibit 9, and if you will take this and look through it and tell us what the division of cost is in connection with that project?

A. From the document submitted therewith—

THE COMMISSIONER: What page are you reading from, so we can have that in the record?

MR. SCHREIBER: Page 6, the Colonel is reading from the last page.

By THE WITNESS:

A. (Reading):

"It is understood that the state expects to be reimbursed by the federal government for all expense incurred in the performance of this agreement, and the state shall not make final payment to the railroad for work performed for the railroad until all the federal authorities approve said work and bills of expense submitted thereto."

Q. That was on Page 6 of Plaintiff's Exhibit [50] 9. Now, referring again to Plaintiff's Exhibits 9 and 10, which you have before you, other than the different percentage division of cost, are the provisions in those agreements substantially identical?

A. Very near, yes.

THE COMMISSIONER: Well, the documents speak for themselves.

MR. SCHREIBER: Well, that is right. That is all I have.

MR. O'ROURKE: If you will excuse me, sir.

(Following a conference between counsel, the hearing was resumed as follows:)

By MR. SCHREIBER:

Q. Col. Wheeler, on these agreements, prior to the passage of the Federal Aid Highway Act in 1933, to the best of your knowledge, from your examination of the books and records of the plaintiff, was there any indication that any benefits were received or any compensation paid by the plaintiff to any of these municipal bodies?

Wheeler-Direct

[51] A. Prior to when—the Federal Highway Act?

Q. Yes, sir.

A. Why, yes. They paid whatever——

Q. I am talking now just about what proportion or percentage which the state bore the cost. For example, in this Plaintiff's Exhibit 10 you testified it was fifty per cent by the railroad and fifty per cent by the state, is that right?

A. Yes.

Q. Now, for that fifty per cent contributed by the state, were there any benefits received or any additional compensation paid by the railroad other than its fifty per cent share of the cost?

MR. LANGER: Excuse me, Counsel, benefits received by whom?

MR. SCHREIBER: By the railroad.

THE WITNESS: Both of you are confusing me on that one. The Commerce Commission has set this. Apparently the railroad did not appeal, and paid. That is all I can say.

By MR. SCHREIBER:

Q. The railroad paid whatever the Commission [52] ordered, is that correct?

A. It looks that way. I can't see any appeal.

MR. O'ROURKE: Will you indulge us just a moment?

THE COMMISSIONER: Yes.

By MR. SCHREIBER:

Q. Now, Col. Wheeler, were any services rendered by the plaintiff to any of these states or municipal bodies?

A. You understand I am not a lawyer. Let's change the word "plaintiff" to something else.

Q. Were any services rendered by the Chicago, Burlington, & Quincy Railroad Company to the state or municipal bodies in connection with these agreements other than what the division of cost against the railroad was?

A. No.

Q. Well, there was no compensation paid other than the exact percentage set by the Commission, is that correct?

A. That is right. Why should the railroad pay any more than the Commission demanded?

[53] THE COMMISSIONER: Anything further?

Wheeler-Cross

MR. O'ROURKE: No further examination.

THE COMMISSIONER: Would you like to take five minutes to collect your notes? Let's take five minutes to walk around.

MR. LANGER: It is O.K. with me.

(Following a short recess the hearing was resumed as follows:)

[54]

CROSS EXAMINATION

By MR. LANGER:

Q. Mr. Wheeler, you realize, of course, that when I cross examine you I am not trying to mix you up in any way. We are just here to get some of the facts that relate to this case, and if I ask anything that seems not to make sense, just stop me and we will try to correct it because we are not trying to mix anybody up. We are just trying to get some of the facts clear.

You mentioned you were the executive assistant to the president from 1938 until approximately eight years ago?

A. Minus the—oh, I was back from the Army then, wasn't I—no, minus the six war years, yes.

Q. So that during those years, say from 1938 on, you had no personal knowledge of what was going on in the state highway authorities, what kind of policies they had internally when they dealt with you?

A. In my eleven states?

Q. Yes, your eleven states?

[55] A. Yes, I knew very well because we were very frank in discussing them. These were friends of mine. I made it a point to make friends of them. They knew me.

Since I became involved in this, knowing that I was going to give this testimony, I have exchanged a letter with Rex Whitton, who knew exactly what I know.

When I was Commissioner in Indiana Rex was a maintenance engineer in the State of Missouri. He later was made head of the Bureau of Public Roads by President Kennedy, held over by President Johnson until he was sick and worn out and went back to Missouri.

Q. You stated during this period you dealt with bodies politic?

Wheeler-Cross

A. That is right.

Q. What do you mean by bodies politic?

A. Bodies politic, I mean townships, counties, cities, villages, states, United States, period.

Q. So you dealt with the highway representatives of those bodies politic?

[56] A. That is right.

Q. And prior to that time when you were with the State of Indiana, that was from 1933 to about 1937?

A. That is right.

Q. At that time you actually knew what the internal policy of Indiana was because you were in it?

A. I set it.

Q. You set the policy?

A. Sure, that is what the government got me for.

Q. Well, then wouldn't you agree there was some sort of a difference between what you knew when you were working with Indiana setting the policies and what you knew in those years afterward when you were with the railroad?

A. Well, I conformed as quickly as I could. See, I had only been there two or three months when the Federal Highway Act of 1933 was passed, and then they all conformed to that act.

Q. Well, do you mean the state highway officials conformed to that act?

[57] A. Yes, sure.

Q. So whatever the act was the same policy——

A. Surely.

Q. —was the same policy of the highway commission?

A. All highway commissions.

Q. Was that same true in other words, that the highway commission had the same policies?

A. Sure. You see that highway act was amended from time to time and the states changed just as fast as they could because they wanted the advantage of the accrued.

Q. Could you tell me what the advantages were that accrued that caused the states to change, as you say, could you explain that?

A. Known as federal aid. Now if you can define federal aid you are the only man I know who can define federal aid, but they call it federal aid. That is your money and my

Wheeler-Cross

money with the corner cut off of it and sent back to us, is all I know, but anyway that is the kind of money that came back to us and it was better than no money, so we all wanted our share of it.

Q. Well, the states wanted the money for the purpose we have been talking about?

[58] Q. And could you tell us why the states want these protection facilities?

A. Oh, the state had many reasons for wanting to do this. The primary reason was they wanted to beat the state commission from demanding it and making us pay for it, making us—the railroad—pay for it. And this was the sure way out of that.

Q. You mean that the states wanted to save the railroads the money so they tried to get it through the federal statute?

A. No. I said we wanted it for fear the state would follow up and want this separation built and assess part of the damage to us. No, sir.

Q. You mean to the railroad, is that right?

A. To the railroad.

Q. You told me now from the railroad's point of view?

A. Yes.

But that was not my question. My question was when you were on the state highway commission you state that the states had this policy of trying to conform to the federal policy?

A. That is correct.

[59] Q. And you said the states want it because they get something out of it?

A. Oh, yes.

Q. Now, we are discussing what did they get out of it?

A. Well, they got ninety per cent of the cost of these separations.

Q. O.K. Could you tell me why do they want the separations? They got the money, why did they want the separation?

A. Well, they wanted the separations first, I suppose, to go along with the president and make work; second, to make the transportation safer at that point; and third, perhaps, to make it move more rapidly.

Wheeler-Cross

Q. Were the states really interested in making the railroad move more rapidly?

A. With safety I think they would be glad to get them out of the way.

Q. For safety, but they really weren't interested in moving the cars, they did not care how the railroads moved, is that right?

A. No, you are quite right.

[60] MR. SCHREIBER: May I object there, just for clarification? I think there is some conflict here. You asked him a question of what the estates hoped to get out of it. He answered that question by saying that transportation would be safer and that there would be more rapid transportation and move more rapidly.

Now, I think it should be clarified as to for whom the transportation was going to be safer, for whom the traffic is going to move more rapidly. If I might ask that for clarification.

MR. LANGER: O.K., but it has no bearing on what I am trying to find out.

MR. SCHREIBER: I thought your follow-up question made an assumption it was safer for the railroad. I just wanted to get it clarified.

THE COMMISSIONER: What do you mean by traffic, do you mean railroad traffic or highway traffic?

THE WITNESS: Both.

[61] THE COMMISSIONER: Proceed, Mr. Langer.

By MR. LANGER:

Q. Well, let's start again.

Mr. Wheeler, as I understand it, we are now talking about why the states wanted to get this federal money.

A. Yes.

Q. Good. Now one of the reasons they wanted it was safety?

A. One of them.

Q. O.K. Now could you explain what the safety was that the states were getting?

Wheeler-Cross

A. Well, if they got the grade separation, the two of them wasn't on the track when a locomotive came along.

Q. And the state was interested in not having automobiles on the track?

A. Yes, the state did not like to have that.

Q. For the reason they didn't like it because they wanted to keep their inhabitants alive?

[62] A. I think that was it.

Q. Now, you also mentioned that when a local community felt any situation was unbearable they went to the highway commission and asked that the——

A. No, no. Now, is this ahead of the Federal Highway Act?

Q. Well, I am really not certain, I am not certain with respect to when you said——

A. Just tell me which way you want it.

Q. I guess at this time we should start at the beginning and we will find out both ways.

A. All right.

Q. Would you first tell me before the Federal Highway Act in 1933?

A. They went to the Commerce Commission in Illinois.

Q. And after 1933, after that act?

A. After that act they went to the highway commission.

Q. Let's start before that again. They went to the state commerce commission?

A. Yes, that is right.

Q. If they felt a situation was unbearable [63] and they felt it should be remedied?

A. That is right.

Q. Can you explain what you mean by "unbearable?"

A. Oh, there were too many accidents, killing too many people.

Q. Could you describe, if you know, what they would do when they went to the commerce commission? How would they go about that?

A. Well, they took attorneys down there and stated their belief.

Q. Generally what was their belief?

A. That the situation was unbearable.

Wheeler-Cross

Q. Again because of accidents, because people were getting killed?

A. Yes. That was the worst thing.

Q. And was that the same after the Federal Act was passed except that now they would go to the state highway commissions?

A. That is right.

Q. They would go down and petition that the railroad would be forced to build a safety crossing or safety device?

[64] A. Well, yes, they went down a great deal. They were always coming down. I think they liked to come down. They could have handled it by letter but they came down.

Q. Now, you also mentioned before that the railroads didn't have to slow down when there was an overpass or a subway?

A. Yes.

Q. And I think I also asked you a question—I would like you to answer it now—whether the community, when they asked for an overpass or underpass, were they interested in whether the railroads went quickly or slowly or whether they mostly were interested in not having accidents?

A. I think they were mostly interested in not having accidents.

Q. In fact, unless they were shipping goods on the train they didn't care whether it was quickly or slowly?

A. I think that is right.

Q. Now, as I understand it, you say around in 1932 FDR wanted to get people to work, and that was part of the reason for having this federal aid, [65] is that correct?

A. Oh, yes, that is correct.

Q. You mentioned that. Could you tell me, to your knowledge, about the construction that went on before that federal act by FDR, could you tell me what, in your opinion, was the main reason for that construction, for the construction that was before FDR's legislation?

A. Well, I don't understand that question at all.

MR. LANGER: Would you read the question?

(The question was read by the court reporter.)

MR. SCHREIBER: Do you want to restate the question?

MR. LANGER: I understand it but I will re-state it in a way that everybody understands it. One of the reasons—

Wheeler-Cross

THE WITNESS: You will have to get over a little farther. My neck don't work.

By MR. LANGER:

Q. One of the reasons, after FDR rose, was [66] to get people jobs?

A. Yes.

Q. What was the reason before FDR's legislation, when we didn't have this reason, what was the reason?

MR. O'ROURKE: Excuse me, you mean for the construction projects that took place prior to 1932?

MR. LANGER: That is it exactly.

By THE WITNESS:

A. The state highway was charged with improving the—well, do you want to know the intent of the legislature that set up the highway? Well, they helped us out.

The legislature would pass a law, the first highway law. It said the state of so-and-so will form a highway commission which will build a highway known as the state highway connecting each county seat with each other county seat. That was it.

So, they started out and they began the first Illinois or Indiana or Ohio State Highway.

Q. Go ahead.

[67] A. That is it.

Q. So that is how the state decided to build a highway?

A. Yes.

Q. O.K. Could you tell us when they decided to build a crossing—overpass or underpass?

A. When?

Q. No, when they decided to what was the purpose for deciding it?

A. As I told you, I don't think the state ever decided to do it. The people in the locality brought action to have this established before the state commission.

Q. So that if the state decided to build a highway, then they built the highway, and say the highway would cross the railroad, then the people in this locality where it crossed would go to the commission?

Wheeler-Cross

A. Yes.

Q. And you discussed that before, right, why they went to the commission?

A. Yes.

Q. You mentioned that when the statute first [68] started, in the time of FDR, the Bureau of Public Roads would decide when to build the crossings by comparing ratios of railroad miles. I wish you would explain that a little more, because that is the first time I have come across it and I would like to understand it.

A. All right. Now, the Bureau of Public Roads, I will give you an example, would notify the State of Indiana that on such a date there was \$200,000 available for the railroads for grade separation signals, etc. And this would be given to the railroads on the ratio of number of miles that railroad had in Indiana to the total railroad miles in Indiana.

Q. So that the money was appropriated by Congress through the Bureau of Public Roads, and appropriated directly, so many dollars to this railroad and so many dollars to that railroad, based on their mileage?

A. It was appropriated by the State Highway. The State Highway was informed that it was available to them on this ratio basis.

The State Highway then told the * * *

* * * *

[84] than the others?

A. Well, it had several comical features that amused me and I always remembered it better.

Q. I see. And do you remember what the reason was that they decided to put up an overpass or underpass in York, Nebraska, on that specific contract?

A. Why they wanted it?

Q. Yes.

A. Well, I think they wanted to get the railroad off their main street, is what I think.

Q. The railroad was on the main street in York, Nebraska?

A. Sure.

Q. Is that possible?

A. Why, sure, crossed it.

Wheeler-Cross

Q. The railroad crossed the main street?

A. Sure, Practically every town in the United States it did it.

Q. I see. And the city didn't want it on the main street?

THE COMMISSIONER: You are saying that the railroad crossed the main street. [85] When you say it is on the main street, you mean at some point on the main street it crossed the railroad tracks?

THE WITNESS: Yes.

THE COMMISSIONER: And therefore, they wanted an overpass or an underpass?

THE WITNESS: That is right.

THE COMMISSIONER: To aid in easing congestion on the main street and so on, is that what you are saying?

THE WITNESS: Sure.

By MR. LANGER:

Q. Now, in this specific case I think you mentioned that they came to you—that means the city came to the railroad—the city came to the railroad and said, "We want an overpass or an underpass?"

A. Yes.

Q. O.K. When you used to negotiate for the railroad did you ever go to the city and say, "We want an overpass here."

A. Yes, we would go and suggest that we build a separation there, yes.

[86] Q. How often did you used to do that? Was that very frequently? Which one was more frequent?

A. More frequently, that is a kind of a hard mathematical problem; not frequent—fifty-fifty.

Q. Sometimes they came to you and sometimes you went to them?

A. That is right.

Q. And when you went to them and you said, "Give us a crossing," what were the reasons that you gave?

MR. O'ROURKE: Wait.

MR. LANGER: Overpass, I am sorry.

THE COMMISSIONER: Wait. In what position is he?

Wheeler-Cross

MR. LANGER: He is on the railroad. We are talking about the railroad again.

THE WITNESS: Am I on the Burlington?

MR. LANGER: Yes.

THE WITNESS: All right, now state your question.

By MR. LANGER:

Q. And you go to a city or locality and you [87] say, "Give us an overpass or an underpass," you had to give him a good reason. If not he wouldn't listen to you?

A. Well, yes. You are correct. We had to give him a reason.

Q. Would you tell us what they were?

A. Yes. We could save the City of Brookfield a lot of delay, particularly because it is a division point and we break up trains here, and we would say, "We are bound to delay you. You are pretty good because this is a Burlington town, half of you are on our payroll, but we think it would be good for you."

Q. Could you explain why? Because it is a division point what does that have to do with an overpass or an underpass?

A. That puts a lot more traffic on the crossing because at a division point you break up trains and re-make them.

Q. Oh, so they are running back and forth more?

A. That is right, across the crossing.

Q. I see. So the people are willing to put [88] in an overpass or underpass and pay for it?

A. Yes.

Q. And they would be willing to do it because it benefits them?

A. Sure.

Q. And that is also for the reasons you mentioned before?

A. Sure.

Q. For the benefit of the people so they would be willing to do it?

A. Sometimes they would be influential. They got a little stubborn in Brookfield but we handled it.

Q. Again I wish to repeat this because I don't want anybody to get the wrong idea. I am just trying to find out the facts, so if I keep on telling what you said and asking you

Wheeler-Cross

about it, I don't mean anything. I am just trying to find out what the facts are.

You also said some of those cities want a watchman and the railroad put up the watchman and then the railroad sent the bill to the city. Can you discuss that more for us?

* * * *

[94] money so we are going to build you an overpass," so that you could have more money. Did they ever say that to the railroads?

A. We told them what their money was they had coming, which had been set up by the Bureau of Public Roads on the ratio which I explained.

Q. Let me ask you, do you know what working capital is, the term "working capital?" That is a technical term. Could you tell me what that means?

A. Well, I think I know.

Q. Would you tell me what it means?

A. Well, if I was in the contracting business and I had a hundred thousand dollars in the bank that was my working capital.

Q. Good. That is what mine is also.

When you were working for the state did you ever go to the railroad and say, "We would like you to have more working capital, so we want to give you an underpass or an overpass?"

A. No.

Q. You never did?

A. No.

Q. Was that one of the reasons that you [95] wanted more money?

A. No.

Q. Let's go farther. When you were with the railroad did they ever come to the railroads in other states, and did the states or the localities ever come to the railroad and say, "We want to make sure the railroad has more working capital so we will give them an overpass or an underpass?"

A. No.

Q. Never told you that?

A. No.

Wheeler-Cross

Q. I just have a few more questions, because it is getting late.

Could you explain to us how the estimate was made as to how much an overpass or underpass would cost? Was that your job also?

A. Why, sure.

Q. Would you explain it?

A. Wait a minute. If it was an overpass where the highway went over the railroad the chief engineer of the highway made the estimate.

Q. State highway now?

A. Yes.

SUPREME COURT OF THE UNITED STATES

No. 72-90

UNITED STATES,
PETITIONER,

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

ORDER ALLOWING CERTIORARI. Filed October 24, 1972.

The petition herein for a writ of certiorari to the United States Court of Claims is granted.

Mr. Justice Powell took no part in the consideration or decision of this petition.